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BABYLONIAN TALMUD

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BY

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TRACT BABA BATHRA
(LAST GATE, PART I.)

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EXPLANATORY REMARKS.

In our translation we adopted these principles:

1. *Tenan* of the original—We have learned in a Mishna; *Tania*—We have learned in a Boraitha; *Itemar*—It was taught.

2. Questions are indicated by the interrogation point, and are immediately followed by the answers, without being so marked.

3. When in the original there occur two statements separated by the phrase, *Lishna achrena* or *Waībayith Aema* or *Ikha d'amri* (literally, "otherwise interpreted"), we translate only the second.

4. As the pages of the original are indicated in our new Hebrew edition, it is not deemed necessary to mark them in the English edition, this being only a translation from the latter.

5. Words or passages enclosed in round parentheses ( ) denote the explanation rendered by Rashi to the foregoing sentence or word. Square parentheses [ ] contain commentaries by authorities of the last period of construction of the Gemara.

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TO HIM

WHO FOR HIS PHILANTHROPY AND HUMANITY IS BELOVED AND HIGHLY PRAISED BY THE PEOPLE OF GREATER NEW YORK AND COUNTRY

THE HONORABLE SAMUEL GREENBAUM

JUSTICE OF SUPREME COURT

THIS VOLUME IS RESPECTFULLY DEDICATED BY HIS ADMIRER AND FRIEND

MICHAEL L. RODKINSON

New York, January 1, 1902.

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TRACT BABA BATHRA (LAST GATE).

CHAPTER I.

RULES AND REGULATIONS CONCERNING HOUSES, YARDS, AND FIELDS IN PARTNERSHIP OR CONJOINTLY; THE SHARING IN PARTITIONS, FENCES, AND WALLS; LOOKING INTO OTHERS' PROPERTY; CLAIMS PAID BEFORE DUE; DUTIES OF ONE TO HIS CITY—STREETS, ETC.; CITIZENSHIP BY LAPSE OF TIME, AND CONCERNING THE SIZE OF A YARD LIABLE TO DIVISION.

MISHNA *I.*: Partners in a courtyard surrounded by two houses, each of them belonging to one of the partners, one of whom (or both) may desire to make a Me'hitza (partition) in the yard, the wall is to be built in the middle exactly. The material for it and all other things must be as is customary in the country; viz.: in the case of unhewn stones (of which the thickness is usually six spans) each of them has to give his share of space and material for three spans; in the case of hewn stones, for two and a half; in the case of half-bricks, between which are usually inserted sand and small stones, for two; and in the case of whole bricks, one and a half spans from each suffice. Therefore, when it happens that such a wall falls, the space and material of it belong to both equally. The same is the case with a garden in places where they are usually fenced: if one of the partners desires to construct a fence, the other cannot prevent him, nor withhold his share of the expense. In valleys, however, in places where it is not usual to fence, one cannot compel his partner to share with him, but he may build a fence about his own portion, and make an enclosure on the outside (as a sign that it belongs to him only); and therefore should such a fence fall, the material belongs to him alone. If, however, such is built conjointly, it must be in the exact middle, and an enclosure is to be made on both sides (as a sign that it was built conjointly); and therefore should it fall, the space and material belong to both.

GEMARA: The schoolmen, in interpreting the Mishna, were about to explain the word Me'hitza as meaning division, according to Numbers xxxi. 43, where the word Ma'htzis is used in the sense of divided into halves; and the Mishna comes to teach that when both have decided to divide their grounds, one of them can compel the other to join in building such a wall, even if he object to do so, from which it is to be inferred that looking into the other's property is considered injurious. But perhaps the expression Me'hitza means only a partition, according to what we have learned in a Tosephtha, that if a partition (which divides the vine from other kinds of products) break, the owner of the other products has to notify the owner of the vineyard twice that he should fence it, and if he does not do so, the products are prohibited and the owner of the vineyard is responsible. And as in this Tosephtha the word Me'hitza is used with the meaning of a fence, so it may be that in our Mishna also it means a fence. And the Mishna teaches that if both have decided to build a fence, then each of them must join in its making, but not otherwise. From which it is to be inferred that looking into another's property is not considered injurious? If it should be so, then why does the Mishna state "the *wall* must be," etc.? It ought to be, "*it* must be built." On the other hand, if the Mishna means that they have decided to divide, why the expression "Me'hitza"? It ought to be "to halve," as people say: "Come to halve our goods"; and also, if looking is considered injurious, why the statement of the Mishna, "if *both* like to do so"? Even if one of them desires, his partner may be compelled to join with him, so as to prevent injurious looking in. Said R. Assi in the name of R. Johanan: Our Mishna treats of a small yard which was not liable to division (it did not contain eight ells), and then only when both consent to divide can one compel his partner, but not otherwise. But then what comes the Mishna to teach? That when the yard is not sufficient for a division, and both wish to do so, they may? Is it not taught plainly farther on? From that teaching one may say that he can compel him only to join in erecting a border-mark, but not a wall. It comes to teach us that the same is the case even with a wall. But if so, why the other statement of a border-mark? There it is needed because of the last part of the Mishna, which teaches that with the Holy Writ it is different: it is not allowed to be divided, even if both consent to do so. Now, the Mishna is explained as treating of

a yard which is not sufficient for division. Then what matters it—even if they have both decided to divide their grounds, could they not retract? Said R. Assi in the name of R. Johanan: It treats of a case in which it was already done with the ceremony of a *sudarium*. But even then, what matters it? After all, it was decided only verbally, and they may retract? It speaks of a case in which the parts of each were already marked off. R. Ashi, however, said: It speaks of a case in which each of them has already made a *hazakha* (settlement) on his part, so that they have acquired title and can no more retract. (The expression in the Mishna for half-bricks is *khphisin*.) Said R. A'ha b. R. Ivia to R. Ashi: Whence do we know that this expression means half-bricks and the additional span is for the stuff which is put between them? Perhaps it means unhewn stones, and this additional span is for the projecting corner. And he answered: The meaning of the words of the Mishna is traditionally so explained.

Said Abayi: A span is needed only when, between the half-bricks, small stones and sand are put, but if only clay, a span is not needed. Shall we assume that a wall, four ells in height, of hewn stones needs the thickness of five spans? Was not the height of the walls of the first Temple thirty ells, and the thickness only six spans, and it nevertheless held? The additional span sustained it. Why, then, did they make the walls of the second Temple still thicker? Because a thickness of six spans can sustain only a height of thirty ells, but not a greater one, and the second Temple was much higher. And whence do we deduce it? From [Haggai, ii. 9]: "Greater shall be the glory of this latter house than that of the former." Rabh and Samuel, and according to others R. Johanan and R. Elazar, differ in the explanation of this verse According to one, it means the building itself; and according to the other, it means the years of its existence. In reality, however, it was in both respects more glorious.

The schoolmen propounded a question: Does the Mishna mean, by giving the sizes, with the lime, or without? Said R. Na'hman b. Itz'hak: Common sense dictates that it means with the lime; for without the lime the sizes mentioned in the Mishna would not be correct (since without the lime it would not hold, and the lime, of course, enlarges the size). But can it not be said that it means without the lime, and because the size of the lime does not reach a span, therefore the Mishna does not count

it? But does not the Mishna state a span and a half? It may be said that, because the two halves make a span, therefore it is counted. Come and hear! (Erubin, p. 28:) "The cross-beam in question must be wide enough to hold a half of a brick, which is three spans in length and in width." There it treats of a great one, and it seems to be so, as it says: "A half of a brick, three spans," etc., from which it is to be inferred that there is a smaller half-brick which is not of the size mentioned, and this is the size in our Mishna, where both half-bricks together measure only three spans with the lime. R. Hisda said: One must not take apart a prayer-house until another one is built; according to some, because it may be neglected by accident, and according to others, because until the new one be built there they will have no place for prayer. And the difference is that, when there is another place for prayer, according to the latter it may be done.

Maremar and Mar Zutra used to take apart the summer house of prayer in the winter, and the winter house of prayer in the summer. Said Rabhina to R. Ashi: How is it? When the money for the new building has already been collected by the treasurer, may the old be taken apart, or not? And he answered: Even then a redeeming of prisoners may happen, for which the sum might be used. But how is it if the whole material for the new building was already prepared? And he rejoined: Even then the above case can happen, and the material would be sold out for this purpose. If so, then even when it is already built? And he replied: A completed building it is not customary to sell for such a purpose. And this was all said in case no sign of ruin was seen in the old building; but if there were such, it might be taken apart immediately. R. Ashi, for example, saw such in the prayer-house at Sura, and took it apart and placed his bed there, and did not take it out until the whole building was ready. It is said farther on that Baba b. Buta advised Herod to take apart the old Temple for the purpose of building a new one. Was this not against the law, as declared above by R. Hisda: "One must not take apart," etc.? If you wish, you may say he saw a sign of ruin in the old one; and if you wish, it may be said it is different with a king, who usually does not retract from his word, as, *e.g.*, Samuel said, that if the king should say, "I will remove this great mountain," it would be done.

Herod was a servant of the Hasmoneans, and there was a

little girl among them upon whom he cast his eyes. One day he heard a voice saying that a servant who should rebel that day would succeed. Then he slew all his superiors except this little girl; and when she saw that he intended to marry her, she ascended to the roof and proclaimed: "If it happen that one shall claim himself descended from the Hasmoneans, be it known that he is a slave, for all the Hasmoneans were slain except myself, and I now commit suicide by throwing myself from this roof." Said Herod to himself: Who insists upon what is written [Deut. xvii. 15]: "From the midst of thy brethren shalt thou set a king," etc.? The rabbis, as the leaders of Israel. He therefore slew all the rabbis, and left only Baba b. Buta, to take advice from him when needed; but he blinded him. One day Herod came (incognito) and sat before him, saying: "Let the master see what the bad slave Herod has done." And he answered: "What can I do to him?" And he said: "Curse him." But Baba answered with the verse [Eccl. x. 20]: "Even in thy thoughts, thou must not curse a king." Herod said: "But he is not a king at all." And Baba answered: "Let him be only rich, it is written [ibid., ibid.]: 'In thy bed chambers, do not curse the rich.' And even if he be only a ruler, it is written [Ex. xxii. 27]: 'A ruler among thy people, thou shalt not curse.'" And Herod said: "This is only when he does as the people of Israel do; but he, Herod, does the contrary." And he rejoined: "I am afraid of him." Herod continued: "But there is no one who could tell him, as only you and I are here." And Baba rejoined with the above-cited verse: "For a bird of the air can carry the sound," etc. Then rejoined Herod: "I am Herod, and did not know that the rabbis were so careful. Had I been aware of this, I should not have slain them; but now I crave your advice; perhaps as to that you will find some remedy for me." And Baba answered: "You have blinded the eye of the world, as it is written [Num. xv. 24]: 'If through inadvertence of the congregation.'* Go, therefore, and occupy thyself with the eye of the world, which is now the Temple, as it is written [Ezek. xxiv. 21]: 'I will profane my sanctuary . . . the desire† of your eyes,' and so I advise you to rebuild the Temple."

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* The Hebrew expression is, "Me'ainai hoaida," literally, "from the *eyes* of the congregation"; hence the leaders are called the *eyes* of the congregation.

† The expression in Hebrew is "Ma'hmad Ainechem," literally, the *delight* of your eyes.

And Herod said: "I fear the Roman government." Rejoined Baba: "Send a messenger to Rome, for which it shall take a year until he shall reach there, and let him remain there a year, and his returning shall also take a year, and during the three years you can take apart this Temple and build a new one." Herod did so, and the answer was: "If you have not as yet taken apart the old one, let it remain so; if you have already taken it apart, do not build a new one; and if you have already taken apart and also rebuilt, such is the custom of bad slaves: they seek advice after the thing is already done. It is true, you are now the ruler. Your record, however, is in our archives, in which it can be seen that you are not a king, nor a descendant of kings. It is only marked, 'Herod, the servant, has made himself free.'" It was said that he who had not seen the new Temple of Herod had not, in all his life, seen a fine building. "With what material did he build it?" asked Rabha. With ornamented marble stone of different colors, the stones being not in a straight line, but alternately projecting and receding, the gaps being intended to receive the lime. He intended to cover it with gold, but the rabbis advised him not to do so, because as it was it looked as effulgent as the waves of the sea.

But why did Baba give Herod such advice? Did not R. Jehudah in the name of Rabh, or in the name of Jehoshua b. Levi, say that Daniel was punished for giving good advice to Nebuchadnezzar, as it is written [Dan. iv. 24]: "Therefore, O king, let my counsel be agreeable unto thee, and atone for thy sins by righteousness," etc.? With the Temple it was different, for except by the king, it could not be rebuilt at all. And whence do we know that Daniel was punished? He was thrown into the lions' den [ibid. vi.].

"*And all other things*," etc. What does the expression *all* add? Those places where it is customary to make such a partition of thorns.

"*Therefore, if it happens that such a wall fall*," etc. Is this not self-evident? It means that, should the wall fall into the part of one of them, or if, in the building thereof, one of the partners should build it all on his part, lest one say that then the other partner should be considered as a plaintiff for whom it is to bring evidence, it comes to teach us that this is not so.

"*The same is the case with a garden*," etc. Does not this paragraph contradict itself? It states: "The same is the case, etc., where it *is* customary to make a fence"; from which it is

to be inferred that if it was not customary, one cannot compel another to join. Then how is to be understood the last part, which states: "In a valley, etc., where it is not customary to make a fence," etc.; from which it is to be inferred that if there be no such custom at all, he may be compelled to join? And this is contradictory, since even concerning a garden, where there was no such custom at all, he is not to be compelled. So much the less in a valley, where there is no such custom? Said Abayi: It means to say thus: In a garden, even where it was not the custom, and in a valley, where it was the custom, to make a fence, the partner may be compelled to join. Said Rabha to him: If it is so, to what purpose is it stated "*however.*" "Therefore," said he, "it means thus: concerning a garden, where there is no custom at all, it must be considered as if it were customary to make a fence; however, in a valley, where it is not the custom, it is to be considered as though the custom were *not* to fence. Therefore in the first case he is to be compelled to join, and in the second he is not."

"*But one may put the fence in the space of his own part,*" etc. How shall the enclosure be put? Said R. Huna: It shall be inclined toward the inside. Why not toward the outside? Because then the partner could cut it off and claim that the wall was built conjointly. But can the same not be done even when it inclines toward the inside? The joining (to the fence) would be recognized. But does not the Mishna state plainly, "*outside*"? The objection remains.

R. Johanan, however, said that the Mishna means not exactly an enclosure, but a sign smeared with clay, the extent of an ell, outside. And why not inside? Because then the partner could mark such outside, to claim that it was done by both. But even now, the partner can scrape it off for the purpose of making such a claim? Scraping can be recognized (as artificial). If, however, the partition were made of thorns, there can be no remedy with a sign, unless one writes it on a note and puts it for safekeeping in the court.* So Abayi maintains.

"*If, however, such was built conjointly,*" etc. Said Rabha of Pharziqa to R. Ashi: Why, then, the enclosure at all? And

* In the text it reads that R. Na'hman said there can be made a sign by *Sinuphi Irikhi*. Luria corrected it to read *Ribhi* instead of *Irikhi*, but failed to give any explanation. The explanation of Rashi is so complicated that we cannot understand it. Ashri, however, and Rabono Gershon omit all this, and we therefore have followed their example.

he answered: The Mishna treats of a case in which one has already made such an enclosure on one side; the other should follow him on the other side, as a sign that the wall belongs to both. And he asked: Does the Mishna teach a remedy against a swindler? And R. Ashi rejoined: Is not the first part, which states that an enclosure should be made (inside or outside), a remedy against a swindler? To which he answered: The first part teaches a law, and by the way gives also the advice which should be the remedy against a swindler; but in the last part it does not teach a new law at all, as it is self-evident that when they have joined in the wall the material belongs to both (and the new teaching is only the remedy against a swindler)? Said Rabhina: The last part treats of a case in which the wall was made of thorns, and comes to teach that it is not as Abayi said above, that there is no remedy except by a note, etc.; but that if the enclosures are made on both sides it suffices.

MISHNA *II.*: If one's estates surround those of his neighbor on three sides, and he has fenced all the three sides, the neighbor is not to be compelled to join in the expense (so long as it is open on the fourth side). Said R. Jose: If the neighbor fenced the fourth side of his field, then he must join in the expense of all the fences.

GEMARA: Said R. Jehudah in the name of Samuel: The Halakha prevails in accordance with R. Jose. And there is no difference whether the fourth fence was built by the surrounder or by the surrounded (as in either case his [the neighbor's] field is now protected). It was taught: R. Huna said: He must take an equal share in all the expense, and Hyya b. Rabh maintains that he has only to pay for the cheapest fence-rails. An objection was raised from our Mishna, which states that when he has fenced all three sides the neighbor is not to be compelled; from which it is to be understood that if he has fenced the fourth side also, then the neighbor must join. Then the decision of R. Jose, who said that when the fourth was fenced he must join in the expense of all the fences, is to be understood that he differs with the first Tana in that, according to him, he must share all the expense equally, while according to the first Tana he must pay only for cheap fence-rails. And this explanation can be correct only in accordance with R. Huna. But according to Hyya, who said that all of them treat only about the payment for cheap fence-rails, what, then, would be the point of difference between the first Tana and R. Jose?

It is to be explained as to the surrounder and the surrounded. According to the first Tana, even when the surrounder has fenced the fourth side, the surrounded has to pay, for the reason stated above; and according to R. Jose, only when the surrounded himself has fenced the fourth side, from which we see that the other fences pleased him; but if the surrounder did so, the surrounded has nothing to pay.

Runya's estate was surrounded by that of Rabhina on all four sides. And when he asked him to join in the expense of fencing, he would not listen. "Join at least in the expense for cheap fence-rails." He would not listen. "Give something for the protection of your estate"; and he would not. One day Runya was engaged in gathering dates from his trees, and Rabhina said to his gardener: "Go and fetch one bunch of dates." And Runya rebuked him. Then said Rabhina to him: "Now your intention that your trees should be protected, if not from thieves, at least from goats, is clear." And he answered: "Goats can be prevented by the voice." And Rabhina rejoined: "But even then you must have a man who shall lift up his voice." Finally Runya came before Rabha, who told him that he should go and settle with Rabhina as well as he could, as otherwise he would decide in accordance with R. Jose as explained by R. Huna.

The same Runya bought a field which was attached to one of Rabhina's, and the latter was about to prevent him, in accordance with the law of preëmption. Said R. Saphra b. R. Ieba to Rabhina: "People say, Zala, who is poor, needed for his family as much bread as Zalla the rich. Permit then the poor Runya, who has already one estate among your estates, to have another one, so that he can make a living."

MISHNA *III.*: If a wall which separated courtyards falls, the owners of both sides have to join in rebuilding it (to the height of four ells). If there is a wall, and one of the owners claims that his neighbor did not bear his share of the expense in building it up to the height of four ells, he is not to be trusted unless he brings evidence (as it is considered that his neighbor did so at the time it was built). Above four ells, one cannot compel his neighbor to join with him. If there *were* a wall above that height, and the neighbor built another one near it to the same height, with the intention of roofing, he has to share in the expense, even before roofing; and if he claims

that he has already joined in the expense, he is not to be trusted unless he brings evidence.

GEMARA: Said Resh Lakish: "A debtor who says: 'I paid my debt to the creditor, when the time had not yet elapsed,' is not to be believed, as usually creditors are glad to be paid in due time."

Abayi and Rabha both said: It may happen that one unexpectedly got money and thought, "I shall pay my debt before it is due, so I shall not be troubled thereafter." An objection was raised from our Mishna, which states that he is considered to have paid at the time it was built. Now let us see how was the case. If the defendant claims that he has given his share of the expense in time, there is no reason why he should not be believed; it must then be said that he claims to have paid it before it was due, and nevertheless the Mishna states that he is to be believed? The case of the Mishna is different, as with every brick or every piece of material that was used the time for payment is considered due; *i.e.*, it is not to be considered that he is claiming to have paid before it was due. Come and hear the other part of the Mishna concerning the height over four ells, which is considered not to have been done conjointly. Let us see how was the claim. If the defendant claims: "I have joined with you in time," why should he not be believed (he is the defendant, and it is for the plaintiff to bring evidence)? It must be, then, that he claims that he has joined before the time due, and we see that he is not believed. There is another reason why he should not be believed, as usually one would pay no money before he is positive that the court will decide against him. R. Papa and R. Huna b. R. Jehoshua acted according to Abayi's decision, and Rabha b. Mar R. Ashi acted according to Resh Lakish, and so the Halakha prevails. And even in the case of orphans, although the master said elsewhere that he who comes to collect from the estate of orphans cannot do it without taking an oath; yet in our case the "hazakha" rule, that one does not pay when it is not due, is strong enough even concerning orphans.

The schoolmen propounded a question: If the plaintiff demanded his money after the time has long elapsed, and the defendant claim that he had paid when it was as yet not due, shall we say that the above standing rule, that one does not pay before due, denies the theory of giving consideration to a claim which appears trustworthy, for the reason that, why should he

tell a lie which only injures him, as, *e.g.*, the defendant could say: "I have paid in time" (and then it would be for the plaintiff to bring evidence), while claiming "I have paid before due," the burden of proof lies upon him, or perhaps such a claim is to be considered even with the standing rule? Said R. A'ha b. Rabha to R. Ashi: Come and hear! If one claims, "I have a *mana* with you," and the debtor answers, "Yea"; on the morrow, when he demands his money, the debtor says, "I have already paid you," then he is free. If, however, he says, "You have nothing with me," he is responsible. Is it not to be assumed that by the expression, "I have paid you," it means in time, and the expression, "You have nothing with me," means, "I have paid you before due"? Hence we see that such a claim is not considered? Nay, the expression, "You have nothing with me," means, "You have never loaned it to me," as the master says elsewhere: He who claims, "I have never borrowed," is to be considered as if he should say, "I have never paid."

"*If, however, he has built another wall,*" etc. Said R. Huna: If he has built only a half-wall, it is the same as if he should build the whole. And R. Na'hman said: He has to join only for the half he has built, but not for what he has not. R. Huna, however, admits that if the neighbor built something opposite the party wall, the corner of his house attaching it to the party wall, then he has not to join in the expense except so far as he has built; and also R. Na'hman admits that if he has prepared in his wall a place for roofing it (from which is to be seen that he intends to continue the wall and to roof it), he must join immediately. R. Huna said the holes in the wall prepared for placing the roofing beams, which were prepared by one of the partners, do not support the claim of the other partner, who says he has joined with him in the building of the whole wall (claiming that if he should not do so he would not expend so much money in an uncertainty, perhaps his partner would not join with him and would not allow him to open windows to the side of his yard), even when the μελαθγοω (the holes which hold the beams) for the roofing beams have already been placed, as the builder may say, "I have prepared the whole thing, with the purpose of not damaging the wall through making holes in it, being sure that this would suit you, and you will join in the expense afterward." R. Na'hman said: If one has placed on his neighbor's wall little *boards* for roofing, it is not to be consid-

ered that the consent of his neighbor suffices for roofing it with *beams*. In the reverse case, however, such is to be considered sufficient. The same said again: If the dripping of water from one's roof into a neighbor's yard take place, it gives him a right to put a pipe on the roof so that the water may run to one place in the same yard; and the same is the case in the reverse, but not if the roofing be of small branches, so that it contains numerous interspaces, thus spoiling the earth where there is dripping through the interspaces. R. Joseph, however, maintains that even this is allowed, and so he acted.

R. Na'hman in the name of Rabba b. Abuhu said: If one let a chamber of his house to his neighbor, and this was a house with many rooms for different tenants, the tenant may use the holes which are in the wall, the beams which protrude up to four ells from his chamber; and if this was an upper chamber, he may also use the thickness of the wall on the roof, if customary to use same; but he has no right to use the front yard. R. Na'hman himself, however, maintains that he has a right to the front yard also, but not to the rear yard; and Rabha maintains that he has a right in the rear yard also.

Rabhina said: A roof which is made for shade, if one has attached it to the wall of his neighbor, it is not to be considered as "hazakha" until the lapse of thirty days. However, if there be no protest after thirty days, it is a "hazakha" (and the owner is trusted if he claim that he has done this with his neighbor's consent). If this, however, was done for the purpose of a booth for the Feast of Tabernacles, after seven days it is considered a "hazakha." If, however, one has attached the roof with clay, it is considered a "hazakha" immediately (as this he would not do without consent).

Abayi said: If there were two houses on both sides of a public thoroughfare, each of the owners has to make a parapet to half of his roof, but not exactly opposite each other (*i.e.*, one may make it on the north and the other on the south), and each of them has to add a little to his half (for the purpose of preventing looking into his neighbor's property). [Questioned the Gemara:] Why only on a public thoroughfare—should it not on a private thoroughfare be the same? The law of a public thoroughfare it was necessary for him to teach, lest one say: "One may claim it is anyhow needed for you to make a parapet to prevent the people passing in the street from looking into your property; therefore make the whole parapet on your property,

and I will bear half of the expense." So he comes to teach us that he may answer: "From the public thoroughfare one can see only in the daytime, but not at night"; or, "Only when I am standing, but not when I sit," and also, "When one likes to look. For you, however, it is to be seen in any circumstances." The master said: "Each of them has to make a parapet to half a roof," etc. Is this not self-evident? He means to say that if one has already done his part, lest one say his neighbor has a right to say to him, "Take from me the expense, and make all of it (as it is too much trouble for me to find a laborer for such a small work; and if you had not done yours, I would have taken laborers to do the whole of it on my property and taken from you your share of the expense)," it comes to teach us that his neighbor may say, "As you do not wish to spoil your roof by the weight of the entire parapet, so I do not wish to spoil mine." R. Na'hman in the name of Samuel said: On a roof which looks into the yard of one's neighbor, he has to make a parapet to the height of four ells. However, between the roofs he need not. And R. Na'hman himself maintains that four ells is not necessary, but a partition of ten spans is. To what purpose? If to prevent looking, then four ells are necessary; and if only for separation of the roofs, in case one step beyond his roof, he should be accused of intention to steal, then any partitions suffice, and if to prevent goats or sheep from straying, a small partition which they cannot jump over suffices? It is for the second purpose mentioned above; but if there should be any separation, he may say, "I stretched my hand over to the neighbor's roof because I wanted to measure the boundary lines on the roof," which is not likely for him to say when the partition is of ten spans. An objection was raised from the following: "If his courtyard was higher than the roof of his neighbor, it is not to be taken into consideration." May we not assume that it means that no parapet *whatever* is needed? Nay. It means the *consideration* of a parapet of four ells, but one of ten spans is required.

It was taught: If there were two courtyards, one upon the other, according to R. Huna the lower one has to build from his upper side upwards until he reaches the upper one, and the higher one continues; and according to Ula and R. Hisda the higher one has to share in the expense of the lower one also; and there is a Boraitha which supports R. Hisda as follows: If there were two courtyards, one upon the other, the upper one

cannot say, "I will begin to build from my property," but he must share with the lower one; and if, however, his courtyard were higher than the roof of his neighbor, he has nothing to do with him.

There were two tenants, one in the upper and one in the lower part of a house, and the roof of the lower one sank, and he called on the upper one to rebuild it. He declined, saying, "My residence is not spoiled." Then the lower one asked of him permission to rebuild the whole thing at his own expense, but the upper one responded, "I have no place in which to live until you shall have rebuilt." Then he wanted to hire a residence for him, but he was told, "I do not want to trouble myself by removing." And to the claim of the lower one that he could not live in the house, he answered, "Thou canst bow thy head when going out and coming in." Said R. Hama: The upper one's claim could be taken into consideration, provided the roof had not reached down to the height of ten spans from the floor of the house; but if it so reached down, the lower one may claim, "This place belongs to my property, and it must be removed." And all this is said when there was no stipulation at the time of building; but if there were, the upper one may be compelled to share in the rebuilding. But to what extent must it have sunk that the lower one should have the right to rebuild? Said the rabbis, in the presence of Rabha, in the name of Mar Sutra b. R. Na'hman: He has quoted his father answering this question, that if the height was less than is stated (Chapter VI., Mishna 4), the height should be the half of the length and the breadth together. And Rabha answered: Did not I tell you, you should never hang a *βιχος* (clay pot) on R. Na'hman's neck? (It means that nonsense should not be quoted in his name.) For I know R. Na'hman's decision was: "If it was spoiled from the ordinary use of a dwelling." However, after all, to prevent controversy the law should state some dimension. Said R. Huna b. R. Jehoshua: If the height decreases so that the bundles of sticks usually made in the city of Mehusa cannot be brought in and be manipulated.

There was one who built a wall against the window of his neighbor, and to the claim of his neighbor, "You darken my place," he answered him, "I will close up at my expense this window and make you a new one above." But the other party refused, saying, "By doing so you will spoil my wall." He said then: "I will take apart your wall unto this place and

build you a new one." The other rejoined: "The old wall will not bear the new building." He then offered to rebuild the whole wall from top to bottom and to make him a new window, and again he refused, saying that one new wall would not correspond with the three old ones. Finally the other party agreed to rebuild the whole house, and still he refused: "I have no place to live." And even then his neighbor agreed to hire for him a residence, and he again responded, "I do not want the trouble of removing." And R. Hama decided that the law cannot compel him to comply with the wish of his neighbor. But to what purpose is this stated? Has not R. Hama declared his decision in the above case? He meant to say that even if he has used the house in question for keeping straw and wood only, even then he cannot be compelled.

There were two brothers who divided a bequest. One took a palace and the other took a nice garden which was in front of it; and the latter built a wall on the edge of the garden, and to the claim of his brother that he darkened his house, he answered, "I built it on my property." And Rabh decided that the law is not against him. Said Rabhina to R. Ashi: Why should this case differ from the case in the following Boraitha: Two brothers divided a bequest. One took a vineyard and the other took a field. The owner of the vineyard is entitled to four ells of the field for the entering of animals to work it up, etc., as it is considered that so was the stipulation at the time of the division. (Hence we see that the requirements of the vineyard are taken into consideration. Why should it not be the same with the palace of the above case?) And R. Ashi answered: There the owner of the vineyard paid to his partner the difference between the two estates, and consequently the stipulation that his vineyard should be worked up was made. To this Rabhina rejoined: Do you mean to say that in the case of the palace there was not any settlement about the value of the two parts of the bequest? Does the law speak of fools? And R. Ashi rejoined: It may be there was a settlement, and the man of the garden took his share for the value of the building of the palace, but they had not made any settlement for the value of the air. But should there not be taken into consideration the rightful claim of the man of the palace, that he has paid him the difference for a palace, and then it was changed into a dark chamber like a prison? Said R. Shimi b. Ashi: The name of the palace does not change even after the wall is

built, and the gratification which the owner of the garden received was for the name. As we have learned in the Middle Tract (p. 275), if one said, "I sell you the estate, which contains a kur of earth, and there is no more than a half," etc., the sale is valid, as it is so called. But still, what comparison is this? There he sold him a piece of ground which was so named, and the buyer is aware of what he bought; but here, could not the man of the palace say: "I have agreed to this division for the purpose of living in it as my parents did, and now it is darkened"? Said both Mar the Elder and Mar the Younger, the sons of R. Hisda, to R. Ashi: The Sages of Nahardai, among them R. Hama, decided according to their theory elsewhere, that they hold with R. Na'hman, who said in the name of Samuel that brothers, after the dividing of a bequest, have no claim for a path, for windows, for ladders, and for canals, each on the other (as they ought to take these into consideration when dividing), and must be strict on this law, as this was enacted once for all. Rabha, however, maintains that such a claim is always to be taken into consideration.

There was a note belonging to orphans, against which the other party showed a receipt, and R. Hama decided not to collect on this note because of the receipt, and not to destroy it until the orphans should have grown up, as they might find some evidence against the receipt. R. A'ha b. Rabha questioned Rabhina: How does the Halakha prevail in all cases like the above-mentioned? and he answered: All of them are to be practised in accordance with R. Hama, except in the case of the receipt, as witnesses should not be considered by us as liars.* Mar Sutra b. R. Mari, however, said that even in the last case R. Hama is right; for, if the receipt were genuine, they would have made use of it while the creditor was still alive, and because they did not do so forgery was to be feared.

MISHNA *IV.*: Partners of a courtyard must share in the expense of building a gate or a door to it, if one of them demands it. R. Simeon b. Gamaliel, however, says: Not all courtyards need a door (the Gemara will explain which need one and which do not). An inhabitant of a city has to share in the building of a wall around the city, with the doors and the bolts. R. Simeon b. Gamaliel, however, maintains that not all cities need one. How long must one dwell in a city to be con-

* In ancient times promissory notes were written mostly by witnesses.

sidered a citizen of it? Twelve months. If, however, he has bought a dwelling-house in it, he is considered a citizen at once.

GEMARA: Shall we assume that a gate to a courtyard is considered a good thing? Is it not a fact that there was a pious man to whom Elijah appeared frequently, and after he had built a gate to his courtyard Elijah did not speak to him thereafter (because this prevented poor men from entering for their needs)? This presents no difficulty. If the door is to be opened from inside, it is not good; but if from outside (so that any one can open it), it is a good thing.

"*Building a gate or door to it,*" etc. There is a Boraitha: R. Simeon b. Gamaliel said that only a yard which is near the public thoroughfare needs a gate, but not one which is not near to it. The rabbis, however, maintain that a courtyard which is even far away from a public thoroughfare may need a gate; for it may happen that people will pass into it from that which is at the thoroughfare, and will cause harm to the owner's property. And also to a city which is far from the boundary a surrounding wall is not required, according to R. Simeon; and the rabbis maintain that each of them may require one in war time. R. Elazar questioned R. Johanan: How shall such a tax be apportioned: according to the number of souls, or to the number of houses, or according to one's wealth? And he answered: According to the number of houses; and thou, Elazar, my son, put nails in this Halakha (that it never escape from thy mind).

R. Jehudah the Second taxed the rabbis for this purpose, and Resh Lakish said to him: The rabbis do not need any guard, as it is written [Ps. cxxxix. 18]: "Should I count them," etc. Count whom—the upright? Can they be *more* than the sands? Is it not written [Gen. xxii. 17] that all Israel is only "*as* the sand"? You must then say that it means that the acts of the upright are *more* than the sands, etc. Now, the little sands guard the sea. So much the more should not the acts of the upright, which are *more* than the sands, guard *them?* R. Na'hman b. R. Hisda taxed the rabbis. Said R. Na'hman b. Itz'hak to him: By this act you have transgressed what is written in the Pentateuch, the Prophets, and the Hagiographa. The *Pentateuch* [Deut. xxxiii. 3]: "Yea, thou also lovedst the tribes; all their saints were in thy hand; and they, prostrate before thy feet, received thy words." Thus said Moses before the Holy One, blessed be He: "Lord of the Universe, even when thou lovest the tribes, the saints of Israel shall be in *thy*

hand" (*i.e.*, they shall be guarded by thee). For the further explanation of this verse R. Joseph taught that it means the scholars who drag their feet from town to town and from country to country to learn the Torah and to discuss about the commandments of the Omnipotent. The *Prophets* [Hosea, viii. 10]: "But even though they should spend gifts among the nations, now will I gather them; and they shall be humbled a little through the burden of the king of princes." And Ula said: This verse was written in the Aramaic language, and the expression *Yithnu* should be read *Yethano*, which means (in Aramaic) "to learn," and it is to be interpreted thus: If all the Israelites who are in exile should occupy themselves with the study of the Torah, the gathering of them would be at hand; but if only a few of them, they should be exempt from the burdens imposed by kings or princes. And the *Hagiographa* [Ezra, vii. 24]: ". . . no one shall be empowered to impose any tax, tribute, or toll," etc. And R. Jehudah said: This means, to free the scholars of the taxes of the government.

R. Papa had taxed orphans for digging a new well. Said R. Shesha b. R. Idi to him: Perhaps no water will be found (and then the money of the orphans would be taken for nothing, for they are not of age to relinquish their property). And he answered: I am taking the money; if there should be water, I will use it; if not, I will return it.

Rabbi opened his barns of grain in the years of famine, and said: This shall be for the use of them who have studied the Bible, Mishna, Gemara, Halakha, or Hagada, but not for ignorant men who have never desired to study anything. R. Jonathan b. Amram entered, and said: Rabbi, feed me. He asked him: My son, hast thou read the Bible? And he said no. Hast thou studied the Mishna, or anything? And he said no. "Then why should I feed thee?" And he answered: Feed me as people feed a dog or a raven. And he did so. After he went out, Rabbi was sorry, saying: Woe is me! that I have given my bread to an ignorant man. Said R. Simeon his son to him: Perhaps this man was your disciple, Jonathan b. Amram, whose custom it is not to derive any benefit from his wisdom. It was investigated, and they found that so it was. Then said Rabbi: My barns shall be open to every one, without any distinction. Rabbi's previous act, however, was in accordance with his theory elsewhere, that chastisements are inflicted upon the world only because of the ignorant men who do not desire to study anything.

"*How long must one dwell in a city,*" etc. There is a contradiction from the following. A caravan with asses or camels, who are travelling from one place to another, who took their rest in a city which was guilty of idolatry, and the caravan while being there were persuaded and worshipped idols, they are to be stoned, but their money must be saved for their heirs. If, however, they were there thirty days, they must be slain by the sword, as inhabitants of the town, and their money is to be confiscated (hence we see that thirty days' residence suffices to be counted a citizen). Said Rabha: This presents no difficulty. To be counted an inhabitant of the town, thirty days suffice; but to be a citizen, twelve months are required. As we have learned in the following Boraitha: If one vows that he shall derive no benefit from the citizens of this town, he must not so derive from them who have resided there for twelve months; but he may derive benefit from them who have resided there less than this time. If, however, he vows not to derive benefit from the *inhabitants* of this city, then he may derive from them only who have not resided as yet thirty days. But have we not learned in a Boraitha that a poor man who has resided thirty days in the city is entitled to get meals from the kitchen of the city charities? Three months entitles him to get cash for food from the treasury of the charities; six months, to raiment; nine months, to burial; and twelve months, he must share in the expense of fencing fields or gardens, which it was then customary to make of sticks in the shape of the Greek letter ψ? Said R. Assi in the name of R. Johanan: The statement in the Mishna, *twelve months*, means also the same.

The same said again in the name of the same authority: Every one, even orphans, must share in the expense of the fencing, except rabbis.

R. Papa said: To the repair of the wall of the city, for buying horses for the riders around the city (for watching and to ascertain what it needs), and for an arsenal, all, even orphans, must contribute, except the rabbis. The rule for this is that to everything from which they derive benefit they must contribute, even orphans. Rabba had taxed the orphans of Mar Mirion for charity. Said Abayi to him: Has not R. Samuel b. Jehudah taught that orphans must not be taxed for charity, even for the redeeming of prisoners? and he answered: I did so only to honor them.

Aiphra Hurmiz, the mother of King Sabur, sent a purse with

dinars to R. Joseph, saying: This shall be used for the highest charity. And he deliberated what kind of charity should be considered the highest. Said Abayi to him: As it is said above that orphans must not be taxed even for the redeeming of prisoners, it is to be inferred that redeeming of prisoners is considered the highest charity.

Rabha said to Rabba b. Mari: Wherefrom is the Rabbi's decision that redeeming of prisoners is the highest charity? And he answered: From what is written [Jer. xv. 2]: "Such as are destined to death, to death; to the sword, to the sword; to famine, to famine; to captivity, to captivity." And R. Johanan said all in this verse that is mentioned later is harder than what precedes it—as, for instance, "to be killed by the sword" is harder than a natural death, in accordance with the verse, as well as with common sense. The verse [Ps. cxvi. 15]: "Dear* in the eyes of the Lord is the (natural) death of the pious," accords with common sense—because from a natural death the corpse remains clean, but the sword defiles it with blood. And that famine is worse than the sword is also learned from the same, as in the verse [Lam. iv.], "Happier are those slain by the sword than those slain by hunger," etc., and common sense—for the latter has to suffer long and great pain, while the former's death is quick and sudden. Captivity, however, is harder than all of them, as in it all the before-mentioned sufferings are endured.

The rabbis taught: Charity must be collected by two persons and distributed by three. Collected by two, because an administrating body must be constituted of no less than two; distributed by three, because it requires deliberation in judgment (as to whether the applicant is worthy of support, and to what extent): therefore it is likened unto a civil case which requires a body of three. The collecting of food is to be done every day; but cash for the charity treasury, only on the eves of the Sabbaths. Distributing of food is for every poor man, but cash is only distributed to the poor of the city. However, the elders of the city have a right to exchange, according to their discretion, money for food, or food for money. The elders of the city have also the right to fix the measures, and the prices of victuals and beverages, and also the wages of laborers, and to fine him or them who transgress their laws. The masters

* The expression in Hebrew is *Yoqor*, which has two meanings—"dear" and "grievous": the Talmud takes the former meaning and Leeser takes the latter.

say: No administrative body should be less than two. Whence is this deduced? Said R. Na'hman: It is written [Ex. xxviii. 5]: "And *they* shall take the gold." An administration requires two; but to bestow trust, one is sufficient. And this is a support to R. Hanina, who said that it happened once that Rabbi appointed two brothers as treasurers of the charity (and two brothers are considered one in this office). But, after all, what "administration" is there in collecting charity? It is as R. Na'hman said in the name of Rabba b. Abuhu, that one may be pledged for charity even on the eve of Sabbath (hence it is administration). Is that so? Is it not written [Jer. xxx. 20]: "I will punish all that oppress them"? Also R. Itz'hak b. Samuel b. Martha said in the name of Rabh that it means even the collector of charity? This presents no difficulty. If the man is wealthy, he may be pressed and pledged as Rabha pressed R. Nathan b. Ammi and took from him four hundred zuz for charity. But if he is not wealthy, then the one who presses him will be punished. It is written [Dan. xii. 3]: "And the intelligent shall shine brilliantly, like the brilliance of the expanse." This means a judge who goes into the depths of the law and tries ever to decide according to the truth. "And they that bring many to righteousness shall be like the stars, for ever and ever." This means the collectors of charity. In a Boraitha, however, it is taught that the first part of the verse quoted means both the judges and the collectors, while the latter part means the instructors of children. Who, for instance, is meant? Said Rabh: "R. Samuel b. Shilath"—whom Rabh found once standing in a garden, and he said to him: "Have you left your honorable position (as I was told that you never left the children whom you are instructing, and now I see you standing without them)?" The answer was: "It is thirteen years since I have seen this part of my property, and even now my mind is with my pupils." (But there are only mentioned the judges, collectors, and instructors of children.) But how about the rabbis? Said Rabhina: The verse [Judges, v. 31], "But may those that love him be as the rising of the sun in his might," refers to them.

The rabbis taught: The collectors of charity must not separate themselves from each other (while they are engaged in collecting). However, one may go to collect from the storekeepers, while the other does so from the keepers of the stands in the market. Should it happen to a charity collector to find money

in the streets, he must not put it into his private purse, but into the purse of the charity, and when he shall reach home then he may take it out. The same is the case if he meets one of his debtors and he pay him what he owes him: he shall not put it into his private purse, but into that of the charity (to prevent suspicion), and when he comes home he may take it out.

The rabbis taught: The treasures of charity, if there be no poor among whom to distribute, they may exchange the smaller coins of the money collected for larger ones, but not from their private purse. And the same is the case with the collectors of food; if there be no poor, they may sell it to others, but not to themselves. The coins of charity must not be counted in pairs, but each one separately (in order to avoid suspicion).

Abayi said: Formerly my master would not sit on the rugs which belonged to the synagogue (because they were brought from the treasury of the charities); but after he heard that the elders of the city have the right to change the use of charity money as they see fit, he sat thereon.

Formerly (he said again), while being a treasurer, he used to have two purses—one for poor strangers and one for the poor of the city; but when he heard that Samuel said to R. Ta'hlipha b. Abdimi, "You can keep the money for charity in one purse with the stipulation that you may distribute it to whom you find worthy," he also kept the money in one purse, as he made the same stipulation with his congregation. R. Ashi, however, who was also a treasurer, said: I need no stipulation at all, as all the donations are intrusted to my discretion.

There were two butchers who made a stipulation that each of them should do business every alternate day, and he who should violate this agreement, the skins of his slaughtered cattle that day should be destroyed. And finally one did business on the day which was not his, and the partner destroyed his skins. And when the case came before Rabha, he made him pay. R. Jimar b. Shlamyah objected to him from that which was taught above, that they may fine them who act against the stipulation, and Rabha did not care to answer him. Said R. Papa: He has done right in not answering, as only when there is no court or honored man may partners make a stipulation between themselves. But if there be, then their stipulations are not to be considered when the court, etc., has no knowledge thereof.

The rabbis taught: One must not examine the treasures of charity, and also not the treasures of the sanctuary. Although

there is no direct support from the Bible, a hint of this is to be found [II Kings, xii. 16]: "And they reckoned not with the men into whose hands they delivered the money," etc.

R. Elazar said: It is advisable for one to count his money, although he has a trusted treasurer in his house, as it is written [ibid., ibid. 11]: "They put up in bags *after* having counted the money," etc.

R. Huna said: If one came to ask food, it may be investigated whether he is in need; but no investigation should be made of him who asks for raiment. This can be seen from the verse [Is. lviii. 7]: "Is it not to distribute thy bread to the hungry . . . when thou seest the naked, that thou clothe him?" etc., as the expression distribute, "Porosh" (with an *sh* instead of with an *s*), means investigate first and then give. And immediately after this it reads: "When thou *seest* the naked," etc., which means *at once*. R. Jehudah, however, maintains the contrary: No investigation for food, but for raiment. He appeals to common sense and to the verse. To common sense—he who requires food suffers the pangs of hunger, which is not the case with him who asks raiment; and the same cited verse is also to be interpreted thus: "Is it not to *distribute* thy bread," etc., means immediately, as the verse is to be explained according to its pronunciation and not the spelling;* "and if thou *seest* the naked," etc., means that he shall *show* you that he is so. And there is a Boraitha supporting R. Jehudah. If one say: "Clothe me," he must be investigated, but if he say: "Feed me," it must be complied with at once without any investigation. There is a Mishna (mentioned in Sabbath, p. 247): "If a wandering mendicant come to a town, he must be given a loaf which can be bought for a pundian (one forty-eighth of a sela), when the price of flour is one sela for four saahs. If he remain over-night, he must be given lodging; and if he remain over Sabbath, he must be given three meals for Sabbath." What is meant by lodging? Said R. Papa: A bed to sleep in and a pillow; and a Boraitha in addition to this states that if this mendicant was begging from door to door, then the congregation need not look after him.

There was a mendicant who begged from door to door, and R. Papa paid no attention to him. Said R. Samma b. R. Ieba to him: If the master pay no attention to him, then no one will

* Their Bibles must have been written differently, as in ours the spelling of the word is as it is pronounced.

mind him, and he may starve to death. But did not the Boraitha say that if he beg from door to door the congregation has nothing to do with him? This means that to him must not be given what is appointed for mendicants who don't beg at the door, but something is to be given him. R. Assi said: One may not refuse to give at least a third of a shekel yearly for charity, as it is written [Neh. x. 33]: "And we established for us (as one of the) *commandments* to impose on ourselves (to give) the third part of a shekel in every year," etc. And he said again: The virtue of charity equals the sum of the virtues of all the other commandments together, as it is written (in the just cited verse) "commandments," in the plural and not in the singular. Said R. Elazar: The gatherer of charity is deemed more virtuous than he who gives charity, as it is written [Is. xxxii. 17]: "And the work of righteousness (*i.e.*, zedaka—charity) shall be peace; and the effect of it quietness and security for ever," which means: If he was worthy of reward, he will distribute his bread to the hungry; and if he was not worthy of reward, the poor will be the members of his household.

Said Rabha to the inhabitants of Mehusa, his city: I pray you, see that there be concord among you, in order that ye shall have peace from the government. R. Elazar said again: When the Temple was in existence one gave his shekel, and he was atoned. Now, when the Temple is destroyed, if people do charity, well and good; if not, the idolaters come and take away their goods by force. Nevertheless, even this is counted as charity in Heaven, as it is written [Is. lx. 17]: ". . . and righteousness as thy taskmasters." (Even when given to the taskmasters, it is counted in Heaven as charity.) Said Mar Uqba: I was told by the child who was corrected by his mother, in the name of R. Elazar, as follows: It is written [Is. lix. 17]: "And he put on righteousness as a coat of mail," etc., which may be understood, that as in a coat of mail every little link thereof is counted in the number which is needed to make up such a coat of mail, so every little coin of charity is counted in Heaven, in the end making up a great amount.

R. Hanina, however, said from the following verse [ibid., lxiv. 5]: ". . . and like a soiled garment, all our righteousnesses . . ." As every thread of a garment makes it into a great garment, the same is it with charity, that every coin counts in the great aggregate.

Why was R. Shesheth called the child who was corrected by

his mother? Because it happened once that R. A'hadbui b. Ammi questioned him something concerning the law plagues; and while discussing this matter, the questioner answered him jestingly. R. Shesheth became dejected, and in punishment for this, R. A'hadbui became dumb, and forgot his studies. The mother of R. Shesheth came to him and wept before him, that he should pray for R. A'hadbui to be cured; but he did not listen to her until she said to him: "See the breasts by which you have been nursed," when he prayed, and R. A'hadbui was cured.

R. Elazar said: The one who is doing charity secretly is greater than Moses our master; as in regard to him it is written [Deut. ix. 19]: "For I was afraid of the anger, and the indignation . . ."; and regarding him who does charity secretly, it is written [Prov. xxi. 14]: "A gift in secret pacifieth anger, and a bribe in the bosom, strong fury." He differs, however, with R. Itz'hak, who says that one pacifies only anger, but not strong fury. Because he maintains that the beginning of the verse just quoted does not correspond with the end; as it was heard in his name that a judge who accepts bribery brings strong fury into the world.

R. Itz'hak said again: He who gives a coin to a poor man is rewarded with six blessings; he, however, who encourages him is rewarded with eleven. The six are [Is. lviii. 8, 9]: "Then shall break forth as the morning dawn thy light. . . . Then thou shalt call, and the Lord will answer." The eleven are [ibid., ibid. 10]: ". . . and satisfy the afflicted soul, then shall shine forth in the darkness thy light . . . And thou shalt be called," etc.

The same said again: It is written [Prov. xxi. 21]: "He that pursueth righteousness and kindness will find life, righteousness, and honor." How is this verse to be understood? Because he pursues righteousness, he will find righteousness? It means that whoever pursues righteousness and charity, the Holy One, blessed be He, will open unto him the ways of procuring money, in order that he may be able to do charity. R. Na'hman b. Itz'hak said that the Holy One, blessed be He, gives him the chance to find men who need and are worthy of support, so that he may have the full reward for it, in the world to come. What does he mean to exclude? He means to exclude what Rabha or Rabba lectured: It is written [Jer. xviii. 23]: ". . . in the time of thy anger deal thus with them."

Thus prayed Jeremiah before the Holy One, blessed be He: "Lord of the Universe! even when they overrule their evil thoughts and are about to do charity, Thou shouldst not give them the chance to support worthy men; but unworthy ones, for which they will get no reward in the world to come." R. Joshua b. Levi said: "Whosoever makes it his business to do charity, will be blessed with sons having wisdom, wealth, and who will preach *haggadah* (morality)." As it is written in the above-cited verse, "will find life," which means wisdom; "wealth," as in the same verse it is written *zedaka* (which means charity, and, usually, to be able to do charity, one must be wealthy); and "haggadah," as in the same verse it says "honor," and reads [Prov. iii. 35]: "The wise shall inherit glory. . . ."

There is a Boraitha: R. Mair used to say: If a common questioner discusses, "If your God likes the poor, why does He not feed them?" one may answer, "For the purpose of saving us from the punishment of Gehenna." This Tarnusruphus questioned of R. Aqiba, and the above was his answer. To which Tarnusruphus rejoined: It is, on the contrary, for this you should be punished with Gehenna; and I will give you a parable from which you will understand why: A king became angry at his slave and put him in prison, with the command that nobody should feed him; in spite of this, a person fed him and gave him drink. Would the king not be angry at and punish such a man? And ye Israelites are called servants, as it is written [Lev. xxv. 55]: "For unto me are the children of Israel servants. . . ." R. Aqiba answered: I will give you another parable, to which my previous answer is to be compared: A king became angry with his son, put him in prison, and commanded that nobody should give him food or drink; in spite of which command, one fed him and gave him drink. When the king became aware of it, would he not be grateful to this person and send him a present? And we Israelites are called children, as it is written [Deut. xiv. 1]: "Ye are the children of the Lord," etc. Tarnusruphus, however, said: Ye are named children, and also servants—children, when ye are doing the Omnipotent's will, and servants when ye act against His will. And you will admit that now ye are acting against His will (as your Temple is destroyed and ye are in exile, which would not be the case, if ye did His will). Hence he who favors you acts against the will of God. To which R. Aqiba answered: With

regard to this, it is written [Is. lviii. 10]: "And if thou pour out to the hungry thy soul, and satisfy the afflicted soul," etc. The "afflicted soul" refers to us in our present circumstances, and nevertheless the beginning of this verse favors such charity.

R. Jehudah b. Shalom lectured: As the yearly household expenses for one are appointed (in Heaven) on each Rosh Hashana, so are his losses. If he is worthy, he will act according to the beginning of the verse cited; but if not, the last portion of this verse, "the afflicted souls," will be the members of his own house. So Rabban Johannan b. Zakkai had seen in a dream that his nephews would lose in the current year seventeen hundred dinars, and he made them distribute this amount for charity. However, seventeen dinars remained with them, and on the eve of Atonement the government took them away from them. Then R. Johannan said unto them: "Fear not; seventeen dinars were taken from you, and you will lose no more." To the question: "Whence do you know?" he answered: "I have seen it in a dream." And to the question: "Why did you not inform us, as then we would have distributed the entire amount to the poor?" he answered: "In order that you give charity only for the purpose of doing the heavenly will."

It happened to R. Papa that, while mounting steps, he slipped, and nearly fell (and would have been killed; but was miraculously saved). Then he said: If this had happened, my enemies would have accused me of being a violator of the Sabbath or an idolater. Said Hyya b. Rabh of Diphti to him: Perhaps a poor man called upon you and you paid no attention to him. As we have learned in the following Boraitha: R. Joshua b. Kar'ha said: He whose eyes are shut to charity is likened unto an idolater; and this is to be taken from an analogy of expression in the following verses: Concerning charity it is written [Deut. xv. 9]: "Beware that there be not Belial in thy heart"; and concerning idolatry, it is written [ibid., xiii. 14]: "There have gone forth children of Belial." Hence the expression Belial makes the two above-mentioned acts equal.

There is a Boraitha: "R. Elazar b. Jose said: Charity and kindness done by Israel in this world, are defenders and peacemakers between them and their heavenly Father; as it is written [Jer. xvi. 5]: 'For thus hath said the Lord, Enter not into the house of mourning, neither go to lament nor to condole with them; for I have taken away my peace from this people,

saith the Lord, yea, kindness and mercy.' Kindness means bestowing of favors, and mercy means charity (hence, because these were taken away, therefore is the peace also taken away)."

There is another Boraitha: "R. Joshua said: Grace is charity, which nears the redeeming; as it is written [Is. lvi. 1]: 'Thus hath said the Lord, Keep ye justice and do *zedaka** (charity).' The same used to say: Ten hard things were created in the world: A mountain is hard, iron cuts it; iron is hard, fire softens it; fire is hard, water extinguishes it; water is hard, the clouds bear it; clouds are hard, the winds spread them; the wind is hard, the body tolerates it; a body is hard, shaking breaks it; shaking is hard, wine dispels it; wine is hard, sleep removes it; death is harder than all of these, and charity saves from death; as it is written [Prov. x. 2]: '. . . but *zedaka* will deliver from death.'"

R. Dusthai b. Yannai lectured: Come and see how the manner of the Holy One, blessed be He, is not as the manner of human beings. When a human being brings a present to the king, there is a doubt whether it will be accepted or not; and if it be accepted, whether he will see the king. But the Holy One, blessed be He, is not so; if a man gives a coin to a poor man, he is rewarded and experiences the appearance of the Shekhinah; as it is written [Ps. xvii. 15]: "As for me, in *zedek* (charity) shall I behold thy face. . . ."

R. Elazar used to give a coin to a poor man before praying, quoting the above verse [ibid., ibid.]: "I shall be satisfied, when I awake, with contemplating thy likeness." What does it mean? Said R. Na'hman b. Itz'hak: "It means that scholars who keep sleep from their eyes in this world, the Holy One, blessed be He, satisfies them with the appearance of the Shekhinah in the world to come." R. Johanan said: It is written [Prov. xix. 17]: "He lendeth to the Lord, that is liberal to the poor." If this were not written, it would be impossible of conception; for it appears as if He becomes a servant to the lender; for it is written [ibid., xxii. 7]: ". . . and the borrower is servant to the man that lendeth." R. Hyya b. Abba, in the name of R. Johanan, said: It is written [ibid., xi. 4]: ". . . but *zedaka* will deliver from death"; and [ibid., x. 2]: "Treasures of wickedness will not profit aught; but *zedaka* will deliver from death." What do the two *zedakas* mean? One, that it

* The Hebrew term is *zedaka*; Leeser translates it "equity," according to the sense.

saved him from an unnatural death; the other, that it saved him from Gehenna. Which of them speaks of Gehenna? The one from chap. xi., as there is there mentioned the day of "wrath"; as it is written [Zeph. i. 15]: "A day of wrath is that day," etc., meaning Gehenna. And what kind of *zedaka* saves one from an unnatural death? If he gives, and knows not to whom, and he who receives it knows not from whom (if he gives his donation to the treasurer of charity). "Gives and knows not to whom" excludes the acts of Mar Uqba (who used to put four zuz every day in the slot underneath the door for one poor man, so that the poor knew not from whom he received it, but Mar Uqba knew to whom he gave it). "The receiver does not know from whom" excludes the acts of R. Abba, who used to wrap up some dinars in his handkerchief and, coming among the poor, stretch his hand containing it behind him, and the poor would take it out; so that he knew not who took it, but the poor knew who was the giver. An objection was raised from the following: What shall one do that he should have male children? R. Elazar said: He should distribute his money among the poor. R. Joshua said: He should enjoy his wife before he has intercourse with her. And R. Eliezer b. Jacob said: He shall not give a coin for the treasury of charity unless the treasurer is like unto R. Hananya b. Theradion. (Hence one must not always give to the treasury of charity?) The above Boraitha meant also when the treasurer was of that kind. R. Abuhu said: Moses said before the Holy One, blessed be He: "Lord of the Universe, how may the horn of Israel be raised?" To which He answered: "You should take charity from every one of Israel who is to be counted" [Ex. xxx. 12]. The same said again: King Solomon b. David was questioned: How great is the power of charity? and he answered: Go and see how David, my father, explained this [Ps. cxii. 9]: "He distributeth, he giveth to the needy: his righteousness endureth for ever; his horn shall be exalted in honor." Rabha, however, said, from the following verse [Is. xxxiii. 16]: "He shall dwell on high; rocky strongholds shall be his refuge; his bread shall be given him; his water shall be sure." And it is to be interpreted thus: "Why shall he dwell on high," etc.? Because to the poor he has given his bread, and to the down-trodden his water was sure. R. Abuhu said again: Solomon was questioned: Who is supposed to be the man who has a share in the world to come? And he answered with the verse [Is. xxiv.

23]: "... and before his ancients in glory" (which means him who is respected in his old age for the wisdom which he gathered during all his life. As it happened to Joseph b. R. Joshua, who was in a state of catalepsy, and when he awoke his father asked him: What have you seen in the upper world? And he answered: I have seen a reversed world: he who is here highly esteemed is there considered of the lowest class, and *vice versa*. His father rejoined: Not a reversed world, but a rational one, have you seen. He continued questioning: And how are we considered there? And he answered: The same as in this world. I also heard a saying: Happy are they who come here with their study in their hands. I also heard that those who were killed by the government, none of the creatures could approach them (because of their high standing).

Who is meant by those who were killed by the government? Shall we assume that R. Aqiba and his comrades are meant? Is it only because they were killed? (They were the greatest men of the generation, aside from this.) It meant them who were killed in Louda. (See Tract Taanith, pp. 45–46.)

There is a Boraitha: Rabban Johannan b. Zakkai questioned his disciples as to the meaning of the verse [Prov. xiv. 34]: "*Zedaka* exalteth a people; but the disgrace of nations is sin." And R. Eliezer answered: "*Zedaka* exalteth a people" means Israel, as it is written [II Sam. vii. 23]: "And who is like thy people, like Israel, the only nation on the earth?" And "the disgrace of nations is sin"—all the *zedaka* and kindness of the nations, if they indulge in them only for the purpose of becoming great or gaining a good name, is a sin for them. R. Joshua (one of the disciples) answered the first half-verse same as R. Eliezer; and the second half: If the nations do so even in order that their kingdom shall continue to exist for a long time, as in the case of Nebuchadnezzar [Dan. iv.]. Rabban Gamaliel answered the first half of the verse as above; the second half: It is a sin for the nations if they do so solely to pride themselves thereon against other nations. So he who is proud without cause falls into Gehenna, as it is written [Prov. xxi. 24]: "The presumptuous and proud, scorner is his name, who dealeth in the wrath of presumption." And by wrath is meant Gehenna, as mentioned above. Said R. Gamaliel: For the right interpretation of this verse we are still in need of the Modaith; as R. Eliezer b. Modaith interpreted it thus: The first part as above, and the second part: If the nations are doing so only for

the purpose of insulting Israel; as it is written [Jer. xl. 3]: "Now the Lord hath brought it . . . because ye have sinned," etc., which was said by Nebusaradan. R. Ne'hunia b. Hakana, however, answered: This verse is to be interpreted thus: *Zedaka* and kindness exalt a nation, meaning Israel; but to the nations it is considered a sin-offering. Their master, R. Johannan b. Zakkai, rejoined: It seems to me that Ne'hunia's interpretation is better than yours and mine. "Than mine! Did he also say something about this?" Yea; as we have learned in the following Boraitha: "Said to them R. Johannan b. Zakkai: As a sin-offering atones for Israel, so does charity atone for all other nations."

Iphra Hurmiz, the mother of King Sabur, sent four hundred dinars for charity to R. Ammi, and he did not accept it, but forwarded it to Rabha, who accepted it, in order to have peace with the royal house. R. Ammi, however, became angry, and said: Does Rabha not accept the verse [Is. xxvii. 11]: "When its boughs are withered, they shall be broken off; women will come and set them on fire; for it is not a people of understanding," etc.?

But why does R. Ammi become angry? Did he not want to maintain the peace with the royal house? He thought that this money ought to be distributed among the Gentile poor only. Rabha also did so, but R. Ammi was not aware of it.

There is a Boraitha: It was said about Benjamin the Upright, who was a treasurer of charity, that at one time a woman came to him in the years of famine, asking him to feed her. And he told her: I swear that there is nothing in the treasury of charity. But she rejoined: Rabbi, if you will not feed me, you will find a woman with her seven children dead. He then fed her from his own pocket. At a later time he became sick and was near to death; the angels said before the Holy One, blessed be He: "Lord of the Universe, Thou hast declared that he who saves one soul of Israel is like unto him who has saved a whole world; and Benjamin the Upright, who has saved a woman with her seven children, should he die in his prime?" Immediately the adverse decree was torn, and a Boraitha states that twenty-two years were added to his life.

The rabbis taught: It happened with the King Monbas, who had distributed his treasure and that of his parents, in the years of famine, that his brothers and the whole household murmured against him, saying: Your parents saved and always added to

the treasure of their parents, and you are distributing all this! And he rejoined: My parents saved their riches in this world, and I save in the heavenly treasury. As it is written [Ps. lxxxv. 12]: "Truth will grow up out of the earth, and righteousness will look down from heaven." My parents saved in their treasury, which brought them no interest, and I have saved in such a treasury as does bring interest. As it is written [Is. iii. 10]: "Say ye to the righteous, that he hath done well; for the fruit of their doings shall they eat." My parents have saved in a place which can be reached by a hand, but I have saved in a place that can be reached by no hand. As it is written [Ps. lxxxix. 15]: "Righteousness and justice are the prop of thy throne: kindness and truth precede thy presence." My parents have saved for their descendants, and I have saved for myself. As it is written [Deut. xxiv. 13]: ". . . and *unto thee* shall it be as righteousness before the Lord thy God." My parents have saved money in their treasury, and I have saved souls in my treasury. As it is written [Prov. xi. 30]: "The fruit of the righteous is of the tree of life; and the wise draweth souls to himself." My parents have saved for this world, and I have saved for the world to come. As it is written [Is. lviii. 8]: ". . . and before thee shall go thy righteousness; the glory of the Lord shall be thy rereward."

"*If, however, he bought a dwelling-house,*" etc. Our Mishna is not in accordance with R. Simeon b. Gamaliel of the following Boraitha, who says that if one bought a tract of land, however small, he is considered a citizen immediately. But have we not learned in another Boraitha that he taught, if one bought a tract of land which is even only fit to build a house upon? There are two Tanaim who have reported differently in his name.

MISHNA *V.*: Partners cannot compel each other to divide a courtyard unless each of the parts measures at least four ells; nor can a field be divided unless each part measures at least nine kabs for sowing. R. Jehudah, however, says: Nine half-kabs. Nor can a garden be divided unless each part measures at least half a kab for sowing. R. Aqiba, however, says: A quarter. Neither can one compel his partner to divide a dining-room, a turret, a pigeon-coop, a cloth, a bath-house, or an olive-press house, unless each has enough room to continue his former work. This is the rule: If, after division, each part retains its former name, then one can compel his partner to divide; but not otherwise. All this is said when the partners disagree;

however, when they do agree, they may do as they please. An exception is the Holy Writ, if they possess it, which must not be divided, even if both agree to do so.

GEMARA: Said R. Assi in the name of R. Johanan: The four ells mentioned must be measured after doors and partitions necessary have been placed. And he may be supported from the following Boraithas: As one of them states that a courtyard is not to be divided unless each part contains eight ells, and another one states, unless four ells; to explain the contradiction, it is to be said that one treats without the doors and partitions, and the other treats with them.

R. Huna said: A yard must be divided in accordance with the doors (it means, he who possesses more doors is to get a greater share). R. Hisda, however, maintains that four ells must be allowed for each door, and the remainder should be divided equally. There is a Boraitha which supports R. Hisda: "All the doors which are in a yard, the owners of them have a right to four ells for each one; if one possesses one door, and another one two, the former takes four, and the latter eight ells; and the remainder is to be divided equally. If, however, one of them possesses a gate which measures eight ells, he has a right to eight ells opposite it, and four ells in the yard." What is meant by the additional four ells? Thus said Abayi: He takes eight ells in the length and four ells in the width of the yard. Amemar said: An excavation in the yard which contains *granum* of fruit for the food of cattle, four ells is to be measured to it on either side. However, this is said when the owner has no separate door for it; but if he has one, four ells to the door only are to be measured. R. Huna said: "To a balcony the law of four ells does not apply, as the four ells which are allowed for each door are for unloading, and to and from the balcony one goes through the door of the house. R. Shesheth objected from the following: Gates of houses, as well as gates of balconies, have a right to four ells? The Boraitha speaks of a balcony which is partitioned with windows; if so, then it is self-evident, as it is a good chamber? It means that the partitions did not reach the ceiling. The rabbis taught: A gate, a balcony, or a gallery to which doors of the upper compartments open, and from which steps lead down to the court, have each a right to four ells. And even if five houses were open to this gallery, no more than four ells are allowed. R. Johanan questioned R. Jannai: Has a chicken-coop a right to four ells,

or not? And he answered: The four ells are given for unloading, and here he can load and unload through the roof of the chicken-coop. Therefore it has no right to four ells.

Rabha questioned R. Na'hman: In the case of a house which is only half roofed, how is the law about the four ells in question? And he answered: It is not entitled to them—not only when it is roofed from inside, so that it is easy for one to go in to unload; but even when it is roofed from outside, he may take the trouble of entering from inside to unload.

R. Huna questioned R. Ammi: If one of the inhabitants of an alley desires to open the door leading from his yard to another alley, may the inhabitants of that alley prevent him, or not? And he answered: They may. He questioned him also: Lodgings for the government militia, how should they be arranged? In accordance with the number of souls or in accordance with the number of doors? And he answered: In accordance with the number of souls. And so also have we learned in the following Boraitha: Manure in the yard is to be divided in accordance with the doors of the house; and military lodgings, in accordance with the number of souls.

R. Huna said: If one of the inhabitants of an alley desires to make a fence around the entrance, the other inhabitants may prevent him, because he extends their way (making them walk around his fence). An objection was raised from the following: If there were five courtyards open to the alley (which was, in turn, open to the street), all of them may use the place bordering on the fifth yard which is nearest the street (for loading, unloading, etc.). The fifth, however, may use only its own place, but not the places near the other yards. The same is the case with the first three at the place near the fourth yard, the first two at the third, and only the first one at all of them, while none of them have the first one. (Hence we see that to the first one none of them has a right; and this objects to R. Huna's theory, who said that *none* of them have a right to make a fence around their entrance.) Regarding this law, Tanaim of the following Boraitha differ: One of the inhabitants of an alley who desires to open his door into another alley, the inhabitants of that alley may prevent him. If, however, the door was *there*, only it was shut, and he wanted to open it, they cannot prevent him. So is the decree of Rabbi. R. Simeon b. Elazar, however, maintains, that if there were five yards opening to an alley, all of them may use the places which border upon the yards in

the alley. And to the question, "Where are yards mentioned?" it was said that this Boraitha is not complete, and should read thus: "And the same is the case with five yards which open into an alley: all of them may use the fifth which is nearest the street, and the fifth can use only its own place, etc. So is the decree of Rabbi. R. Simeon, however, maintains that all of them may use the places alike."

The master says: If there was a door, and it was shut, the inhabitants cannot prevent him. Said Rabha: This law holds good only when he had not broken the hinges; but if he had broken the hinges, it is supposed that he had not intended to open the door again, and the inhabitants can prevent him from doing so. Said Abayi to him: The following Boraitha supports you: "If there was a house with a closed door, the four ells for unloading applies to it; if, however, the owner broke the hinges from the door, he has lost his right to them." Rabba b. b. Hana, in the name of R. Johanan, said: Alleys which are open to a road which leads to another city, and the inhabitants of this city desire to close them, the inhabitants of that city may prevent them; not only when there is no other road to that city, but even if there was another road, they can also prevent them. As R. Jehudah, in the name of Rabh, declared: A thoroughfare which is occupied by a majority, it is prohibited to spoil.

R. Annan, in the name of Samuel, said: Inhabitants of alleys who desire to make doors to their ends which are open to the street may be prevented by the public. The schoolmen were about to interpret this that it meant only the first four ells which are attached to the public ground, but not beyond this. As R. Zera said elsewhere, in the name of R. Na'hman: The four ells which are attached to the public ground are to be considered as the public ground itself. In reality, however, it is not so, as R. Na'hman's decision there was only regarding the law of defilement; but here it might happen that the street should be crowded and many people would enter beyond the four ells.

"*Nor can a field be divided*," etc. And R. Jehudah does not differ with the first Tana, as each of them speaks in accordance with the custom in his country. But what is the law in Babylon? Said R. Joseph: It can be divided if there is enough to plough for a day. How is this to be understood? If it means in the days of sowing, when the earth has already been ploughed, then the ploughing will not last two days, and in one day it could not be

completed; and if in the days of ploughing, then in the time of harvest there will not be a day's work (and it is a trouble to hire laborers for a fraction of a day)? If you wish, it may be said that it means a day of ploughing and sowing together; and if you wish, it may be said that it means a day of sowing and artificial watering. R. Na'hman said: A valley can be divided when there is for each part a day's artificial watering. "A vineyard," says the father of Samuel, "three kabs for each part." And so also we have learned in the following Boraitha: "If one says: 'I sell you a part of the vineyard,' it is no less than three kabs. So is the decree of Symmachos." Said R. Jose: "Such a decree is only prophetical, as I see no ground for this." How is the law in question to be decided in Babylon? Said Rabha b. Qisna: There shall be no less than three bushes, each of them containing no less than twelve branches of grapes, to dig which is a man's day's work.

Said R. Abdimi of the city 'Haifa: Since the Temple was destroyed, prophecy was taken away from the prophets and was given to the wise. (How is this to be understood?) Can a wise man not be also a prophet? In other words, were all the prophets fools? He means to say, that although it was taken away from the prophets who were not wise, it was not taken away from the wise ones. Said Amemar: And a wise man is better than a prophet, as it is written [Ps. xc. 12]: ". . . obtain (*nobbi* *) a heart endowed with wisdom." And usually, who is dependent upon whom? The smaller is dependent upon the greater. Hence wisdom is greater than prophecy. Said Abayi: This theory may be supported from the fact that one great man declares something new, and exactly the same had been said by another great man. Said Rabha: "What support is this? It may be that both of them are equal in wisdom. Therefore," said he, "it happens frequently that a great man declares something new, and afterwards it is found that Aqiba b. Jose has already declared so (and it is hard to say that he was equal in wisdom to R. Aqiba). R. Ashi, however, objected also to this: It may happen that in this one case he was equal in wisdom to him. And he supported this from the fact that it very often occurs that a sage declares a Halakha, and afterwards it is learned that the same was already said to Moses on Mount

* The expression in the Bible is *ve'nobbi*, which has two meanings—"to obtain," and also "a prophet." The Talmud takes it literally, that a prophet has a heart of wisdom. Leeser translates according to the sense.

Sinai. But even then, perhaps it was by chance, as it happens that a blind man accidentally seizes something. It means that he declares also the reason of it.

R. Johanan said: Since the Temple was destroyed, prophecy was taken away from the prophets and was given to lunatics and small children. What is meant by lunatics? Thus it happened to Mar b. R. Ashi, who was standing in the market of Mehuza and heard a lunatic say that the future head of the college in Suria would be Tibumi (Mar's name was Tibumi). And he said: "Who among the rabbis signs his name Tibumi, if not myself? Hence I shall succeed." And he went to Suria. In the mean time the rabbis of the college intended to appoint R. A'ha of Diphthi as their head. However, when they heard that Mar had arrived, they sent to him two of the rabbis to take his advice, and he detained them. Then they sent another two, and he did the same with them. Finally ten of them arrived, and then he began to teach and to lecture, and proclaimed himself as the head of the college. [He did so because one must not begin to lecture if there are less than ten persons present.] R. A'ha then applied to himself the saying of the sages: He to whom harm has been done by heaven, has no hope of relief in the near future, and *vice versa*.

And what in regard to the children? For example, the little daughter of R. Hisda was sitting on the knee of her father, and Rabha and Rami b. Hama were sitting opposite, and to the question of her father, "Whom of them would you like to marry?" she answered, "Both of them." And Rabha immediately rejoined: "I shall be the last one." (And so it was. Rabha married her after the death of her first husband, Rami b. Hama.)

R. Abdimi of 'Haifa said again: Before one eats and drinks he has two hearts, and after this he has only one, as it is written [Job, xi. 13].* Said R. Huna b. R. Joshua: Who is used to wine, even if his heart is locked like a virgin's, the wine opens it; as it is written [Zech. ix. 17]: ". . . and new wine the virgins."

R. Huna b. R. Joshua said: It is certain that when a first-born among his brothers (who is entitled biblically to two shares) comes to inherit his shares in real estate, he is to be given two portions adjoining. But how is it if the first-born has died

* The expression in this verse is *nabub yilabab*; literally, "The empty one shall receive two hearts." Leeser's translation does not correspond.

without children, and the surviving brother marries his wife and takes his shares—does the law of preëmption apply to him also, as to the dead brother, or not? Abayi said: He is to be treated just as the dead one. And Rabha said: It is written [Deut. xxv. 6]: "And it shall be that the first-born," etc., which signifies that he shall be treated as the first-born in that respect, but not respecting the division of a heritage.

There was a man who bought an estate near to the estate of his father-in-law (who had no male children), and when they came to divide the inheritance of the father-in-law, he insisted that the estate at the boundary of the one he bought should be given to him. Said Rabha: Such a claim, if not listened to, it would be equal to the acts of Sodomites. Therefore they must be compelled to comply with his wish. R. Joseph opposed: Could not his brothers-in-law claim that this estate was pleasant to them as the estate of Bar Marion (which was then known as the best estate)? And the Halakha prevails in accordance with R. Joseph (if the estate needs no artificial watering). Should one of brothers who are about to inherit two estates of dry land, each of which has a pond for watering, buy an estate adjoining one of the two estates in question, and demand that this should be given him as his share—said Rabha: As each of them has a pond for watering, his claim is a right one; and if declined, it would be a Sodomite custom. R. Joseph, however, opposed this, saying: His brother can claim: "It might happen that one pond would become dry and we should be compelled to water both estates from one pond; but as he has bought another estate, the pond will not be sufficient for watering all of them, and mine would remain dry." And the Halakha prevails in accordance with him also in this case.

If the inheritance consists of two estates which are watered from one pond, and one of the brothers has bought an estate adjoining one of these, and demands this adjoining one as his share—said R. Joseph: His claim is a right one, as the above reason cannot apply here; and, therefore, if it should not be listened to, it would be a Sodomite custom. To which Abayi opposed: One can claim: "It is better for me to have my estate between your two, and then it will be better preserved." However, the Halakha prevails again with R. Joseph, as the latter claim is not to be considered. If two brothers inherit an estate which has a river on one side and a pond on the other, the

estate must be divided diagonally so that each half borders on both the river and the pond.

"*Nor a dining-room,*" etc. But how is it when there is not so much space for each? According to R. Jehudah the law, "Either you concede or I concede," must be applied. One of them can say: "Either I pay you cash for your share, and the whole estate remains for me, or *vice versa.*" And R. Na'hman said: Such a law cannot be applied, and they must remain in partnership. Said Rabha to R. Na'hman: According to your decision, that the law of concession does not apply in such a case, how is it, then, if a first-born and his brother have inherited from their father a slave, or an animal which is not fit for slaughtering—how shall they divide it? (A first-born is entitled to two-thirds; and therefore he took as his instance a first-born, because it is more difficult for them to remain partners.) Answered R. Na'hman: Because I say even then they must remain partners, and the slave or animal in question must serve to one two days, and to the other one.

An objection was raised from the following: If there is a bondsman only in half (as, for instance, he has been a bondsman of two masters and was freed by one of them), he may serve his master one day, and attend to his own business the other day. So is the decree of Beth Hillel. Said Beth Shammai: Such a law is partial, as you have satisfied only the master, but not the bondsman; as the bondsman cannot marry a female slave, for he is half free, nor can he marry a free maiden, because he is half slave, shall it be decided that he shall remain unmarried? This would also be improper, as the world is created for reproduction; as it is written [Is. xlv. 18]: "Not for naught did he create it: to be inhabited did he form it." And therefore he can compel his master to set him free, and accept a note for half his value. And Beth Hillel changed their decision and yielded to that of Beth Shammai. (Hence we see that in such a case the law of concession applies?) Here it is different, as the concession is not an even one for both partners; for the bondsman can only demand of the master to accept half his value for freeing him; but the master cannot demand of the bondsman to sell him his free half, as this is against the law.

Another objection was raised: Two brothers, one of them rich and the other poor, inherit from their father a bath- or a press-house. If it is rented to somebody, they must certainly divide the rent; but if the bath was made for their private use,

the rich brother can say to the poor one: You may hire or buy servants who will prepare the bath for your use, but I will not pay for half the work, or buy olives and press them in the press-house. (Hence we see that the law of concession does not apply?) Here also the concession is not even, as the poor one has no money to offer to pay for his share in the inheritance. Come and hear another objection from our Mishna. "If, after the subdivision, each part can retain its former name," etc., but if not, it must be appraised in money and one of the partners must concede his share to the other when he is paid. (Hence the law of concession applies?) On this point Tanaim differ, as we have learned in the following Boraitha: "If one of the partners says to the other: 'Take your share in full, and I will take the remainder,' he must be listened to. R. Simeon b. Gamaliel, however, says that he must not."

Now let us see. If the case be similar to that of our Mishna, why should R. Simeon b. Gamaliel object? We must say, then, that the Boraitha cited is not complete, and it should read thus: "You take the prescribed quantity for your share, and I will take the remainder; or, I will concede or else you concede"—he is to be listened to. And R. Simeon b. Gamaliel said: "Nay." Hence Tanaim differ. The case may be similar to that quoted in our Mishna, and the reason of R. Simeon why he must not be listened to, is this: He may claim: "I have no money to pay for your share, and I do not want to accept a present from you." As it is written [Prov. xv. 27]: "He that hateth gifts shall live."

Said Abayi to R. Joseph: R. Jehudah's decision, that the law of concession applies, is in accordance with Samuel, who said, concerning the Holy Writ, that if it was a property of two partners "it must not be divided even when both agree," the case being only when it was bound in one volume; but if bound in two parts, they may. And this can also be correct when the law of concession does not apply; for if it were applied, then there would be no difference whether bound in one or in two parts. R. Shalman, however, explained the decision of Samuel: When both partners agree to divide.

Amemar said: The law of concession is to be applied. Said R. Ashi to him: And what about R. Nah'man's decision? And he said: I do not hold with him. "Is that so? Did it not happen to Rabba and R. Dimi, the sons of Hinna, that their father bequeathed unto them two female slaves, one of them

able to cook and bake, and the other to spin and weave; and they came before Rabha, and he decided that the law of concession did not apply here?" "There was another reason; viz., both brothers needed the services of both slaves. And to decide, 'You take one and I take the other,' would not be the law of concession." But did not Samuel decide that when bound in two parts they might divide? It is already explained above that he speaks of a case when both partners are willing to do so.

The rabbis taught: One may attach the Pentateuch to the Prophets, and both to the Hagiographa, and keep them in one volume. So is the decree of R. Meïr. R. Jehudah, however, said: "Each of them is to be kept separately." The sages said, furthermore, that the book of each Prophet must be kept separately. Said R. Jehudah: It happened with Beithus b. Zonin, that he had eight books of the Prophets attached together, with the permission of R. Elazar b. Azariah. According to others, however, he had the books, but they were each of them kept separately. Said Rabbi: It happened once that the Pentateuch, Prophets, and Hagiographa, attached to one another, were brought to us, and we approved it.

After each book of the Pentateuch, four lines must be left blank when copying. The law is the same regarding each book of the Prophets; except in the case of the books of the Twelve Prophets, three lines after each is sufficient to be left blank. However, if one book ends at the bottom of the page, the next book may be begun right at the top of the next page without leaving any lines blank.

The rabbis taught: "If one wishes to attach the scrolls of the Pentateuch, Prophets, and Hagiographa to one another, he may do so, provided he leaves a whole page blank at the beginning, and at the end enough blank space to wrap around the entire scroll; and he may begin a new book at the top of a page when the previous book ends at the bottom of the page preceding. And if he wishes to separate the books afterwards, he may do so." How is this to be understood? It is self-evident that a separate book is better than if attached. It means to say one may begin at the top of the page; as then, if he decides to separate the books, it will be easier for him to do so. There is a contradiction in the following Boraitha, which states: "There must be blank space at the beginning and at the end of each book, sufficient to wrap it up." To wrap what up? Around

the whole book? Then it contradicts the former Boraitha which states that at the beginning one page is sufficient; and if it means only one page, then it contradicts the above, which states "enough at the end to wrap around the book"? Said R. Nah'man b. Itz'hak: This Boraitha also means to leave blank space at the beginning and at the end, as prescribed. R. Ashi, however, said: The latter Boraitha speaks of the Holy Scrolls, as we have learned in the following Boraitha: "All scrolls are rolled (around *one* holder) from right to left; the Holy Scrolls are rolled towards the middle (and must be attached to *two* holders); and a blank page must be left both at the beginning and at the end." And R. Eliezer b. R. Zadok said: So wrote the scribes of Jerusalem their Holy Scrolls.

The rabbis taught: The length of the Holy Scrolls must not exceed the circumference; nor must the latter exceed the length.

Rabbi was questioned about the prescribed dimensions of the Holy Scrolls. He answered: Six spans in length when written on double parchment will be equal to the circumference; and when on ordinary parchment, I do not know what length.

R. Huna wrote seventy Pentateuchs, and in only one of them the length happened to be equal to the circumference. R. A'ha b. Jacob wrote only one, on calf-skin, and the measurements happened to be just as prescribed; and the rabbis cast their eyes upon him, and he died.

[Said the rabbis to R. Hamnunah: Is it true that R. Ammi wrote four hundred Pentateuchs? And he answered: Perhaps he wrote only one verse [Deut. xxxiii. 4]: "The law which Moses commanded us, is the inheritance of the congregation of Jacob," four hundred times. Similarly to this, Rabha questioned R. Zera: Is it true that R. Janai had planted four hundred vineyards? And he answered: Perhaps such as contain five trees, two on each side and one behind (which, in regard to the law of Kilaim, is considered a vineyard).]

An objection was raised: The ark which was made by Moses was two and a half ells in length, one and a half in width, and one and a half in height: all these measurements were taken with an ell of six spans. The tablets which were brought down by Moses were six spans square and three spans thick: they were placed in the ark lengthwise. Now, how much space did the tablets occupy in the ark? Twelve spans. Then three spans of space were left. Take off one span for the two walls of the ark, each of which was half a span, then two spans' space

was left, where the Holy Scrolls were placed. As it is written [I Kings, viii. 9]: "There was nothing in the ark save the two tables of stone," etc. The expressions "nothing" and "save" are an *exclusion* after an *exclusion;* and there is a rule that where such is to be found, it means an *inclusion;* and here the Holy Scrolls are included, which were in the ark. Now the length of the ark is accounted for. How is the width to be accounted for? The tablets occupied six spans in width; and from the remaining three one span must be deducted for the two walls. This leaves two spans of empty space, to the end that the Holy Scrolls should not be crushed while being taken out or returned. So said R. Mair. R. Jehudah, however, maintains that the ell was of five spans. The tablets, which were six spans square and three thick, were placed in the ark lengthwise, and occupied twelve spans, thus leaving only one-half span of space: one finger (a quarter of a span) for each wall. This is for the length. As to the width, the tablets occupied six spans; and from the remaining space of one and a half spans take off half a span—one and a half fingers* for each wall—leaving then one span; and this was occupied by the pillars. As it is written [Solomon's Song, iii. 9 and 10]: "The pillars thereof," etc. And also the casket in which the Philistines placed the gift to the God of Israel was put alongside. As it is written [I Sam. vi. 8]: "Ye must put in a casket alongside of it, and then send it away," etc. And upon the casket the Holy Scrolls were placed. As it is written [Deut. xxxi. 26]: "Take this book of the law, and put it at the side of the ark," etc. We see, then, that it was placed at the side and not within the ark. But what is to be *included* from the two *exclusions* mentioned above? The broken tables, which were first broken by Moses. Now, if it is borne in mind that the circumference of the Holy Scrolls was six spans, its diameter must have been two spans, as there is a rule that everything with a circumference of three spans has a diameter of one span. Now, as it was said above, that the Holy Scrolls were rolled toward the middle, then the diameter must exceed two spans, for the space in the middle between the two rolls could not be reckoned in the two spans. How, then, could it get in? Said R. A'ha b. Jacob: "The Holy Scrolls which were written by Moses (of which the king read the por-

* "One and a half fingers"—meaning the little finger, of which there are six to a span.

tion belonging to him, and the high priest read on the Day of Atonement in the court of the Temple) were rolled from left to right only, in one roll." But even then, how can you put in a thing which is two spans in thickness into a space of only two spans? Said R. Ashi: "A piece of the parchment was left out from the roll, so that it could be put in the two spans, and what was left was lying on the top." But according to R. Jehudah's theory, where were the Holy Scrolls placed before the Philistines sent the casket? A little board was attached to the pillars, and the Holy Scrolls were put upon it.

The rabbis taught: "The order of the prophets is as follows: Jehoshua, Judges, Samuel, Kings, Jeremiah, Ezekiel, Isaiah, and the Twelve Prophets." Let us see: Hosea, of the Twelve Prophets, was before Isaiah, as it is written [Hosea, i. 2]: "The beginning of the word of the Lord," etc. This certainly cannot be understood that he was the first of the prophets to whom the Lord spoke since the time of Moses, as there were many prophets after Moses preceding Hosea. And therefore R. Johanan explains that he was the first of the four prophets who prophesied at that period; viz.: Hosea, Isaiah, Amos, and Micah. Hence he was before Isaiah. Why is he placed after? Because his book is counted among the Twelve, among whom were Haggai, Zechariah, and Malachi, who were the last of the prophets: therefore his book is placed together with theirs. But why was the book of Hosea not separated, and placed first? Because his book is small, and if it were placed separately it would become lost. However, was not Isaiah before Jeremiah and Ezekiel? Why is he not placed first? Because "Kings" ends with the destruction of the Temple, and the whole book of Jeremiah speaks of the destruction, and that of Ezekiel at the beginning speaks of the destruction and at the end of consolation, while Isaiah's entire book speaks of consolation: destruction was put next to destruction, and consolation next to consolation.

The order of the Hagiographa is as follows: Ruth, Psalms, Job, Proverbs, Ecclesiastes, Song of Solomon, Lamentations, Daniel, Book of Esther, Book of Ezra, and Chronicles.*

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* Rashi explains the reasons of the order of the Hagiographa, which, in his opinion, was arranged in order of time, and maintains that Job was written after Ruth and Psalms, the two latter having been written, according to him, by David; and concerning the Songs, he says: "It seems to me that Solomon said or wrote them in his old age." However, the order of our Scriptures is different, and they are cer-

And who wrote all the books? Moses wrote his book and a portion of Bil'am [Numbers, xxii.], and Job. Jehoshua wrote his book and the last eight verses of the Pentateuch beginning: "And Moses, the servant of the Lord, died." Samuel wrote his book, Judges, and Ruth. David wrote Psalms, with the assistance of ten elders, viz.: Adam the First, Malachi Zedek, Abraham, Moses, Hyman, Jeduthun, Asaph, and the three sons of Korach. Jeremiah wrote his book, Kings, and Lamentations. King Hezekiah and his company wrote Isaiah, Proverbs, Songs, and Ecclesiastes. The men of the great assembly wrote Ezekiel, the Twelve Prophets, Daniel, and the Book of Esther. Ezra wrote his book, and Chronicles—the order of all generations down to himself. [This may be a support to Rabh's theory, as to which, R. Jehudah said in his name, that Ezra had not ascended from Babylon to Palestine until he wrote his genealogy.] And who finished Ezra's book? Nehemiah ben Chachalyah.

There is a Boraitha in accordance with him who said that the last eight verses of the Torah were written by Joshua; namely: "It is written [Deut. xxxvi. 5]: 'And Moses the servant of the Lord died,' etc. Is it possible that Moses himself should have written 'and he died'? Therefore it must be said that up to this verse Moses wrote, and from this verse forward Joshua wrote. So said R. Joshua, according to others R. Nehemiah." Said R. Simeon to him: Is it possible that the Holy Scrolls should not have been complete to the last letter, and nevertheless it should read [ibid., xxxi. 26]: "Take this book of the law," etc. Therefore, we must say that up to this verse the Holy One, blessed be He, dictated, and Moses repeated and wrote it down; and from this verse forward He dictated, and Moses with tears in his eyes wrote it down; as thus it is read [Jer. xxxvi. 18]: "Then said Baruch unto them, With his mouth did he utter clearly all these words unto me, and I wrote them in the book with ink."

According to whom, then, is the following—that R. Joshua b. Aba, in the name of R. Gidel, quoting Rabh, said: "The last eight verses of the Pentateuch, when read from the Holy Scrolls, must be read by one person without any interruption"?

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tainly not in the order of time, as modern critics ascribe a much later period of time to almost all the books, and we are still ignorant of the reason why the order was changed in the canons we possess from that in the Talmud, and who it was that substituted the existing order.

Should it not be in accordance with R. Simeon? It may be also in accordance with R. Simeon; and the reason for the exception of these eight verses is because, as there was already a change at the writing by Moses (as said above), the change is made also here. "Joshua wrote his book"; but is it not written there: "And Joshua died"? This was written by Elazar. But is it not written there: "And Elazar died"? The book was finished by his son Pinchas.

"Samuel wrote his book." But is it not written: "And Samuel died"? The book was finished by Gad the seer and Nathan the prophet.

"David wrote the Psalms," etc. But why did the Boraitha not enumerate also Ethan the Ezrachite? Said Rabh: "The latter and Abraham are identical." It enumerates Moses, and also Hyman; did not Rabh say that by Hyman is meant Moses? There were two Hymans.

"Moses wrote his book," etc. This is a support to R. Levy b. Lachma, who said that Job lived in the time of Moses.* Rabha, however, said: Job lived in the time of the spies which were sent by Moses to investigate Palestine.

One of the rabbis was sitting before R. Samuel b. Na'hmeni and said: Job never existed; and is mentioned in the Scripture only for an example. Said he to him: The Scripture is against your theory, as it states plainly [Job, i. 1]: "There was a man," etc. But according to your theory it is also written [II Sam. xii. 3]: "But the poor man had nothing," etc. Was it so in reality? It was written only for an example! The same may be said concerning Job? If it were so, why, then, his name and the name of the country he came from?

R. Johanan and R. Elazar both said that Job was among the ancestors of the Babylonian exiles; and his college was in Tiberias.

An objection was raised: There is a Boraitha: "Job's age was from the time when Israel came to Egypt until he left it." Read: "As many years as the Israelites were in Egypt." Another objection was raised. There were seven prophets who have prophesied to the nations, viz.: Bil'am and his father, Job, Eliphaz the Themanite, Bildad the Shuchite, Zophar the Na'amathite, and Elihu ben Barachel the Buzite. (Hence we

* His support is from an analogy of expression; and the Gemara discusses the analogy, but it is too complicated, and therefore omitted. The same is the case with the saying of Rabha farther on.

see that Job was a Gentile?) And according to your theory, was then Elihu, just mentioned, a Gentile? He was certainly an Israelite, as it is written, "of the family of Ram." And why is he called a prophet of the nations? Because his prophecies were for the nations. The same can be said concerning Job. But did not the Jewish prophets also prophesy for the nations? The Jewish prophets prophesied to Israel, and to the nations also, but the above-mentioned seven have prophesied for the nations only.

There is an objection from the following: A pious man was among the nations, and Job was his name; and he came to this world only for the purpose of receiving his reward. The Holy One, blessed be He, however, brought chastisements upon him, and he began to blaspheme; the Lord then doubled his reward in this world, so that he should have no share in the world to come. (Hence we see that Job was a Gentile?) On this point Tanaim of the following Boraitha differ: R. Elazar said: Job was in the time of the Judges; as it is written [Job, xxvii. 12]: ". . . deal in such vanities?" And which generation was one entirely of vanities? It is the generation of the Judges. R. Joshua b. Karha said: Job was in the time of Ahasuerus; as it is written [Job, xlii. 15]: "And there were not found such handsome women as the daughters of Job," etc. And in which generation were handsome women searched for, if not in the generation of Ahasuerus? [But perhaps it was in the time of David, when handsome women were also searched for [I Kings, i. 3]? There they searched only among the daughters of Israel, but in the time of Ahasuerus it is written, "in all the land."] R. Nathan said that Job was in the time of the Queen of Sheba, as it is written [Job, i. 15]: "When the Sabeans made an incursion." [And R. Samuel b. Na'hmeni said in the name of R. Jonathan: He who translates *Malchas Sheba* "the queen of Sheba" is in error, as the right translation is "the government of Sheba."] And the sages said: He was in the time of the Chaldea, as it is written [ibid., ibid. 17]: "The Chaldeans posted themselves," etc. Still others said that Job was in the time of Jacob and has married Dinah, Jacob's daughter. (They infer it from an analogy of expression, *Nebala*.) And all the just mentioned sages hold that Job was an Israelite, except the last, who maintains that he was a Gentile. R. Johanan said: It is written [Ruth, i. 1]: "And it came to pass in the days when the judges judged," etc. It means it was a generation that

judged the judges. If, *e.g.*, the judge said to them: "Take out the toothpick from thy tooth," they answered: "If thou wilt take the beam out of thy eyes, I will remove the toothpick." If, *e.g.*, the judge said to one: "Thy silver is become dross," the answer was: "Thy wine is drugged with water" [Is. i. 22] (*i.e.*, if the judge accused one of a small transgression, the accused said to him: "Thou thyself art a greater sinner than I am").

It is written [Job, i. 6–9]: ". . . that the accuser (Satan) also came in the midst of them," etc. Satan said before the Lord: "I have sped all over the world, and found no trusty man like thy servant Abraham, to whom thou didst say [Gen. xiii. 17]: 'Arise, walk through the land in the length of it and in the breadth of it; for unto thee will I give it.' And notwithstanding this, when he searched for a grave to bury his wife Sarah, and did not find one until he bought it for four hundred silver shekels, he did not murmur or bear in mind anything against thee." "Then said the Lord to Satan," etc. Said R. Johanan: That which was said about Job is more important than that which was said about Abraham, as regarding the latter it is written [ibid., xxii. 12]: "Now I know that thou fearest God," etc. And regarding the former it is written [Job, i. 1]: "And this man was perfect and upright, and fearing God and eschewing evil." What is meant by "eschewing evil"? Said R. Aba b. Samuel: Job was liberal with his money; it is customary, if a laborer has done some service to the value of half the smallest coin, that the employer takes him to the storekeeper, buys something for this coin, and gives the laborer the half due him. Job, however, gave him the whole coin for such services. "Then Satan answered, Is it for nought that Job feareth God? . . . the work of his hands hast thou blessed." What does this mean? Said R. Samuel b. R. Itz'hak: "Any one who took a coin from Job for business, has succeeded." And what means, "And his cattle are far spread out in the land"? Said R. Jose b. Hanina: His cattle have changed the order of the world. Usually wolves kill goats; Job's goats, however, killed wolves.

"But only stretch forth thy hand," etc. [ibid. 11–19]: "The oxen were ploughing, and the she asses were feeding beside them." How is this to be understood? Said R. Johanan: From this is to be inferred that the Holy One, blessed be He, gave Job a foretaste of the world to come (as about the world

to come it is written [Jer. xxxi.] that pregnancy and birth in a woman occurred together). "A fire of God," etc. [to ii. 5]. Satan again answered the Lord, as said above.

"And Thou hast incited me against him," etc. Said R. Johanan: If this were not written it would be impossible for a human being to conceive it: the Scripture speaks of the Lord as if He were a human being who can be influenced through incitement.

There is a Boraitha: Satan descends and tempts human beings; then ascends and accuses them; then takes the order and takes the soul of him whom he has tempted.

"Then the accuser answered the Lord," etc. [ibid., ibid. 4–8]. Said R. Itz'hak: Satan was more afflicted than Job himself. It is similar to a master who says to his servant: "Break the barrel, but save the wine" (without letting him have a vessel to save it in). So was it with Satan; the Lord told him to take Job's body, but to save his soul. Said Resh Lakish: From this we see that he who is called Satan is himself the evil spirit who tempts one to sin; and he himself is the Angel of Death, as he was told to save the life: from which it is to be seen that the life of man was in his hands.

R. Levi said: Satan and Peninnah both intended (with their accusation) to please heaven. Satan, who had seen that the Lord was favorable toward Job, feared that through the justice of Job Abraham's merits would be forgotten, and, therefore, he spoke as above. And Peninnah, as it is written [I Sam. i. 6]: "And her rival also provoked her continually, in order to make her fret," etc. It means for the purpose of making her pray and have a child. R. A'ha lectured the same in the city of Papuniah, and Satan came and kissed his feet for this.

"With all this, did not Job sin with his lips." Said Rabha: "With his lips he did not sin, but he sinned in his heart." What was it? [Job, ix. 24]: "Is a land given up to the wicked? He covereth the faces of its judges: if this be not the truth, who is it then?" * Said Rabha: Job was about to turn the dish face downwards (*i.e.*, to deny the might of the Lord).

* This is the exact translation of Leeser, which we follow in our edition. The Bible commentaries differ in the explanation of this passage, which is very complicated, and Leeser, following one of them, explains it all as a question. The latest commentator, Dr. Benjamin Szold of Baltimore, interprets it according to the Talmud, that the first half should not be understood as a question, but as a fact; and it seems to us he is right.

Said Abayi to him: Job spoke only about Satan. On this point Tanaim differ. About the just cited verse R. Elazar said: Job was about to turn the dish face downwards. And R. Joshua said to him: Job spoke only with regard to Satan. It is written [ibid. x. 7]: "Still it is within thy knowledge that I am not wicked, and there is none that can deliver me out of thy hand." Said Rabha: Job wanted to free the whole world of a trial. He said thus: Lord of the Universe, Thou hast created an ox with parted hoofs, and us without (and Thou hast commanded that only creatures with the parted hoofs shall be eaten, but Thou couldst have made it the reverse). Thou hast created Paradise, and Thou hast created Gehenna; Thou hast created the upright, and Thou hast created the wicked. Who can prevent Thee? (Hence no reward and no punishment should be dealt, as all was done according to Thy will!) And what have Job's colleagues answered to this? [ibid. xv. 4]: "Yea, thou truly makest void the fear (of God), and diminishest devotion before God." Which means that the Holy One, blessed be He, has created the evil spirit, and He has created wisdom as a remedy against him.

Rabha lectured: It is written [ibid. xxix. 13]: "The blessing of him that was ready to perish came upon me; and the heart of the widow I caused to sing for joy." From the first half of this verse we learn that he used to rob a field belonging to orphans, improved it, and returned it to them; and in the latter half we learn that if there was a widow whom no one wished to marry, he put his name upon her, saying that she was his relative, and then it was easy for her to marry. It is written [ibid. vi. 2]: "Oh, that my vexation could be truly weighed, and my calamity," etc. It was said by or to Rabh: The earth may cover Job's mouth for this. He makes himself a comrade of providence [ibid. ix. 33]: "There is no one who can decide between us, who could lay his hand upon us both." Said Rabha: For this also his mouth may be covered with earth: should a slave rebuke his master? [ibid. xxxi. 1]: "A covenant had I made with my eyes: how, then, should I fix my look on a virgin?" Said Rabha: He had not looked upon strange women, but Abraham had not looked even at his own wife; as it is written [Gen. xii. 11]: "*Now* I know that thou art a woman of handsome appearance," from which it is to be inferred that *before* that time he knew not that.

[Job, vii. 9]: "As the cloud vanisheth and passeth away:

so will he that goeth down to the nether world not come up again." Said Rabha: From this we see that Job denied resurrection. [Ibid. ix. 17]: "He that bruiseth me with his tempest, and multiplieth my wounds without a cause." Said Rabba: Job has blasphemed by the tempest, and by the tempest he was answered. Blasphemed by the tempest—as he said: "Lord of the Universe! Perhaps a tempest passed before Thee and changed to Thee the word Iyabh to Oyabh." * And by the tempest he was answered—as it is written [ibid. xxxviii. 1]: "Then did the Lord address Job out of the storm-wind. . . . Do but gird up like a mighty man thy loins: and I will ask thee, and do thou inform me."

So said He: "I have created many hairs on human beings, and for each hair I have created a separate hole; for if two should be nourished from one hole, it would blind the eyes of men; now from one hole to another it was not changed to me; and from Iyabh to Oyabh, should it be changed?" [Ibid., ibid. 25]: "Who hath divided off water-courses," etc. "There are many drops that I have created in the clouds, and for each drop there is a separate place; for if two drops should go into one, they would make the earth too soft, and it could not produce; these places were not changed to me." ". . . And a way for the lightning (that is followed by) thunders." "Many thunders have I created in the clouds, and for each thunder there is a separate track; for if two should go along the same track, they would destroy the world. The tracks were not changed to me; and from Iyabh to Oyabh, should it be?" [Ibid. xxxix. 1]: "Knowest thou the time when the chamois of the rock bring forth?" "The chamois of the rock is cruel towards its offspring, and when the time of bearing comes she ascends to the top of the mountain, so that the offspring should fall and die. And I send an eagle which receives it with its wings." "Markest thou when the hinds do calve?" "The hind has a narrow womb, and when the time of bearing comes, I procure a snake that bites her in the womb, so that she is able to bring forth the offspring. In both cases it must happen at the exact moment; for if it occurs a second before or a second later, the young in the first case, and the mother in the latter, would die. Now, from one second to the other

* Job in Hebrew is spelled Iyabh: Oyabh means enemy; and this means that perhaps the vowels were changed, thus rendering, instead of *Job*, *enemy*.

there never is a change; and from Iyabh to Oyabh, should it be changed?" [Ibid. xxxiv. 35]: "Job hath not spoken with knowledge, and his words are without intelligence." Said Rabha: From this it may be deduced that one is not to be made responsible for his words at a time when he is afflicted. [Ibid. ii. 11–13]: "When, now, the three friends of Job . . . and they met together," etc. What is meant by "they met together"? Said R. Jehudah in the name of Rabh: They all entered at one time the gate of the city where Job lived; although a Boraitha states that each of them lived three hundred parsas away from the others. But who informed them? According to some, each of them had a crown on which were engraved the pictures of his three colleagues; and if one of them became afflicted, the picture was changed. And according to others, they had in their garden three trees, each of which bore the name of one of the friends; and if one became afflicted, the tree was changed. Said Rabha: This is what people say: "Either to have colleagues like Job's, or death."

It is written [Gen. vi. 1]: "And it came to pass when men began to multiply . . . and daughters," etc. R. Johanan said: With a daughter, multiplication comes into the world, as in Chaldaic a girl is called *rabhia;* literally, *multiply.* Resh Lakish, however, maintains that with a daughter strife comes into the world, as *rabhia* means also *strife.* Said Resh Lakish to R. Johanan: According to your opinion, multiplication comes with daughters; why was not Job doubly rewarded with daughters, as he was with sons and with all his property? And he answered: Although they were not doubled in number, they were in beauty; as it is written [Job, xlii. 13–15]: "He had also fourteen * sons and three daughters," etc. And farther on it is written: "And there were not found such handsome women," etc.†

To R. Simeon, Rabbi's son, a daughter was born; and he became dejected. Said his father to him: With thy daughter came multiplication (*rabhia*). Said Bar Kapara to him: The

* *Shibha* in Hebrew means seven; so it is written in Job ii. In this passage it is written *shibhnah*, which, according to the Talmud, means *fourteen;* and double what was before, as all his property was doubled. Leeser has translated *seven*, giving no attention to the letter *nun* added in this word.

† In the text it is deduced from the names of the daughters; *e.g.*, Yememah, *beautiful as the day*, etc. We have omitted this, as it is difficult, with the Hebrew words, each of which has several meanings, to point out which meaning it bears, and to discuss it. And it is also unimportant.

consolation of your father is very poor. The following Boraitha states: "The world cannot be without males and females. However, happy is he whose children are male, and woe to him whose children are female. The world cannot be without a spice dealer and a tanner (*burseus*); happy is he who is a spice dealer, and woe to him who is a tanner." On this point, however, the Tanaim of the following Boraitha differ. It is written [Gen. xxiv. 1]: "The Lord has blessed Abraham *bakhol* (in all things)." What does the word *bakhol* mean? R. Meir said: He was blessed in not having any daughters. R. Jehudah, however, said: He was blessed in having a daughter. Anonymous teachers say: He had a daughter with the name *Bakhol*. R. Elazar the Modai said: Abraham, our father, was an astrologer; and therefore all the kings from the West and the East came to his door to ask his advice.* R. Simeon b. Johanan said: A diamond was hanging on Abraham's neck, and when a sick man looked upon it, he was cured. And when Abraham passed away, the Lord sealed it in the planet of the sun. Said Abayi: This is what people say: When the day arrives, the sick become better. There is another explanation of the word *bakhol* —that as long as Abraham was alive Esau did not rebel. According to still others: "Because Ishmael repented in his days." That Esau did not rebel in his days is stated in a Boraitha to explain the verses Gen. xxv. 29–34 as referring to that day on which Abraham died. And that Ishmael had repented is explained by Rabha, in the name of R. Johanan, to Rabhina and to R. Hama b. Buzi thus: It is written [ibid., ibid. 9]: "And his sons Isaac and Ishmael," etc. And from the fact that Isaac is named first, although Ishmael was older, it is to be understood that Ishmael had repented and, knowing that Isaac was better than he, given him the preference. But perhaps the verse only does it because it was so, and Ishmael had nothing to do with it? Then the Scripture [ibid. xxxv. 29] would also say Jacob and Esau, and not according to the age, as it is now. Hence the previous construction is correct.

The rabbis taught: There are three to whom the Holy One, blessed be He, gave a taste of the world to come in this world; namely, Abraham, Isaac, and Jacob: Abraham—

* The term in the text for this is *aiztagninuth*, and the commentators explain this to mean *astrologer*. According to Schönhak, however, it is composed of two Greek words, στεγω, νοοω, which mean one who can fathom the mysteries of mankind.

because regarding him is written *bakhol;* Isaac—because regarding him is written *mikhol;* and Jacob—regarding whom is written *khol.* The same three overruled the evil spirit, as the words just mentioned are written regarding them.

The rabbis taught: There are six whom the Angel of Death has not dominated: the former three, and Moses, Aaron, and Miriam—the three former, because of the words mentioned; and the three latter, because it is written [Num. xxxiii. 38]: "By the order of the Lord," etc. There are seven whom the worms have not devoured: the former six, and Benjamin ben Jacob; according to others, also David—the former six, because of the reasons stated above; and Benjamin, because it is written [Deut. xxxiii. 12]: "The beloved of the Lord (is he), he shall dwell in safety," etc. There are four who died without sin, but because it was so decreed at the time when the serpent made Eve eat the fruit of the tree of wisdom; viz., Benjamin b. Jacob, Amram father of Moses, Jesse father of David, and Khilab b. David—to all of them traditionally, except Jesse the father of David, which is also deduced from the verse.*

* This also is deduced from different verses in the Scripture, in a very complicated way which would be of no interest to the English reader, and has therefore been omitted.

CHAPTER II.

RULES AND REGULATIONS CONCERNING SPACE TO BE LEFT BETWEEN ONE'S PROPERTY AND ANOTHER'S, BE IT OF ONE OR TWO KINDS. UNDER WHAT CONDITIONS A TENANT MAY PLACE AN OVEN IN HIS DWELLING. UNDER WHAT CIRCUMSTANCES A SHOP IN A YARD MAY BE PREVENTED. CONCERNING THE SPACE TO BE LEFT BETWEEN A CITY AND PIGEON-COOPS, TREES, BARNS, CEMETERIES, AND TANNERIES.

MISHNA *I.*: One must not dig a well near that of his neighbor, nor a channel, cave, aqueduct, or basin for washing, unless it be removed to a distance of at least three spans from that of his neighbor, and plastered with lime. Olive or poppy waste, dung, salt, lime, and flint-stones must also be removed to a distance of three spans, and must be covered with lime. To the same distance, seeds, ploughing, and urine must be removed from the wall; a handmill to a distance of three spans from the lower millstone, which is four from the upper millstone; and an oven three spans from the foundation, which is four spans from the upper rim.

GEMARA: The Mishna begins with a well and ends with a wall? Said Abayi, according to others, R. Jehudah: By the term "wall" is meant the wall of the well. But then it could teach: "Unless he removes it from the well," and it would be self-evident that the meaning is "from the wall of the well"? The Mishna comes to teach us by the way that a wall of a well must measure no less than three spans, in cases of selling and buying, as we have learned in the following Boraitha: "If one says, 'I am selling you the well with its walls,' the walls must measure three spans."

It was taught: If one comes to dig a well at the boundary of his neighbor's vacant plot, has he to remove it to the distance mentioned in the Mishna, or not? According to Abayi he has not, and according to Rabha he has. They differ with regard to a plot prepared for works only; but if it is not prepared for this, they both agree that he may dig at the boundary. And

even if it was according to Abayi, he is not obliged to remove the well to any distance. Even in accordance with the theory of the rabbis, who state farther on that if one comes to plant a tree near the well of his neighbor, he must do so at a distance of twenty-five ells, it is because the well was already in existence there at the time he comes to plant; but here the well does not as yet exist. And according to Rabha he must maintain the distance. Even in accordance with the theory of R. Jose, who says, farther on, that each of the neighbors has a right to do what he pleases on his own property, etc., it is because, when he begins to plant, roots which can injure the well do not as yet exist. But here the owner of the plot which is prepared for wells may claim: "Each time you use the spade at my boundary, you weaken my estate."

An objection was raised from our Mishna: One must not dig a well near that of his neighbor, from which it is to be inferred —near the already existing well; but if not, he may. And this contradicts Rabha's theory? He may answer: Was it not taught, in addition to this, that it means from the wall of the well?

Another objection from the latter part of our Mishna was raised, which enumerates all the things that are to be removed from the wall, from which it is to be understood that it speaks of an existing wall, but not if it is not yet in existence. And the answer was: This can also be explained that the Mishna comes to teach us that all the things which it enumerates are injurious to the wall.

Come and hear the following: A tree must be removed from a well to a distance of twenty-five ells. Does it not mean from an existing well? Here also it may be explained to mean that at a distance of less than twenty-five ells the roots are injurious to the well. But the same is the case if the well did not as yet exist. If so, then how should the latter part, which states that if the tree is already in existence one has not to cut it down, be understood? For if one must not plant a tree near a plot, even when it is only prepared for walls, how can such a case be found? As R. Papa explained elsewhere, it speaks of a case where one buys such. So it can also be explained here to mean: In case one bought such a tree, he has not to remove it.

Come and hear the following: One must remove a pond for steeping flax from herbs, garlic from onions, and mustard from

bees. Is it also not to be understood to mean already existing herbs? Here also it can be explained, even when it is only prepared for them, and it comes to teach that the things mentioned harm one another. But if so, how should the latter part: "R. Jose allows mustard. . . . Because the bees consume the blossoms of my mustard," be understood? As if one must remove the bees even from a place which is only prepared for mustard, how can such a case be found? Said R. Papa: "It means, when one buys such." But if so, then what is the reason of the rabbis' decision; and also according to R. Jose, why only with mustard? Should it not also be the same in the above case of herbs and flax? Said Rabhina: The rabbis hold that the injurer has to remove himself from the things which can be injured by him; *e.g.*, if the roots of a tree are injurious to a well, the tree must be removed, and not the well. (Says the Gemara:) From Rabhina's statement it is to be inferred that R. Jose holds that the injured one has to remove himself—then why only in the case of mustard? The same ought to be the case with the herbs. If there is a pond for steeping flax, the herbs should be removed, and not the pond? Therefore we must say that R. Jose is also of the opinion that the injurer must remove himself, and the reason of the herbs in question is because the pond does harm to the herbs, and not the herbs to the pond; but bees and mustard injure each other. And thus said R. Jose to the rabbis: The case of the herbs and pond is correct, because the pond injures the herbs, and not *vice versa*. But why should the same be in the case of bees and mustard, which injure each other? The rabbis, however, are of the opinion that bees do not harm mustard; for if they try to consume the mustard within the sown seeds, they cannot grasp them, by reason of their extremely small size. And if they do harm the leaves, it would not matter, for others will grow. But how can it be said that R. Jose holds that the injurer must remove himself—does not the following Mishna state: R. Jose said: Although the well was in existence before the tree was planted, the latter has not to be cut down, etc.? Therefore we must say that R. Jose holds that the injured one has to remove himself. And he said to the rabbi thus: My theory is, that the injured one must remove; but even in accordance with your theory, that the injurer must remove, your decision is correct in the case of the herbs in question, as the pond harms the herbs, etc. But why should it be the same in the case of mustard and

bees, which do harm each other? To which the rabbis answered as stated above. The mustard, however, harms the bees on account of its pungency.

"*Nor a basin for washing*," etc. Said R. Na'hman in the name of Rabba b. Abuhu: The case is when it is a basin for soaking clothes (they used to soak clothes for several days in canine dung); but if it is a basin for washing, it is to be removed four ells (because of splashing while washing). And so also we have learned in the following Boraitha: "A basin for washing —four ells." But in our Mishna it is stated "three spans." Hence it must be explained that the Boraitha treats of a basin for washing, and is in accordance with R. Na'hman.

R. Hyya b. R. Ivya taught in our Mishna plainly: Provided there is a space of three spans from the edge of the soaking pond to the wall.

"*And plastered with lime*." The schoolmen propounded a question: Does the Mishna state, "and plastered with lime" (which means that this must also be done), or, perhaps, "*or* plastered with lime" (which means that one of the two requirements suffices)? It certainly teaches "*and* plastered with lime"; for if it read *or*, then all parts of the Mishna would be taught together, as there is no difference between them. But perhaps it teaches separately, because the injurious effect is not the same in both cases: in the one case it is wetting from the well, while in the other it is the heat from the olive waste? Come and hear the following Tosephtha: R. Jehudah said: "If a flint-stone is placed by a human being between the properties of two persons, each of them may dig a well on his property at a distance of three spans from the flint-stone, provided the walls of the well be plastered with lime." We see, then, that only when that from which the earth becomes weak is placed there by a human being the lime is needed; but if it is there naturally, no lime is needed? Nay; the same is the case even when it is there naturally; and the expression "placed" is necessary, lest one say that in such a case the prescribed amount of space is not sufficient. Therefore he comes to teach us that it does not matter.

"*Olive or poppy waste*," etc. There is a Mishna [Sabbath, p. 86]: "It must not be deposited . . . and also not in lime or in sand," etc. Why, then, here is sand not mentioned and a flint-stone is, while there the reverse is taught? Said R. Joseph: Because it is not customary to deposit victuals in flint-

stones. Said Abayi to him: "Is it, then, customary to so deposit in wool-flocks, and, nevertheless, it is mentioned there? Therefore," said Abayi, "the Mishnayoth rely upon each other." (*I.e.*, our Mishna relies upon the cited one in the case of sand, while the latter Mishna relies upon ours in the case of flint-stones, as the same is the case with both.) Said Rabha to him: "If such were the case, then the other things would not be repeated in both Mishnas; but some of them would be mentioned in one Mishna, and others in the other. Therefore," said Rabha, "the reason why a flint-stone is not mentioned in the cited Mishna is because a pot with victuals cannot be deposited there, as the flint-stone would break it. And the reason why sand is not mentioned here is because the nature of sand is such that it is warmed up by a hot thing, but it is cooled by a cold thing." (Hence, here, it must not be removed.) But did not R. Oshia teach us in his Boraitha that sand must also be removed? R. Oshia numbers it among the things which are injured by wetting. Let, then, the Tana of our Mishna also add this to the category of things that injure by wetting? Wetting is already dealt with in the case of the channel mentioned therein. But does not the Mishna state, "a basin for washing," which is also in the same category, although a channel has already been mentioned? Both must be mentioned, because one could not be inferred from the other, for the following reasons: If a channel only were mentioned, one might say because it is stationary—but for a basin for washing, which is not stationary, the space in question is not needed. On the other hand, if it mentioned only a basin for washing, one might say: "Because of the wetting by stagnant water which has been used for washing is injurious, but a channel does not matter." Therefore both had to be mentioned.

"*Seeds, ploughing*," etc. Why is it necessary for both to be mentioned? If seeds must be removed, is it not self-evident that ploughing for the purpose of sowing is also meant? It means even when the seeds were sown in an unploughed field where they are not so deep. And would not ploughing be understood from seeds; as what is a field ploughed for, if not for sowing? It means even when it was ploughed for the improvement of trees. But why all this? It has already mentioned the things that injure by wetting; and as a field that has been ploughed or in which seeds have been sown needs wetting, it is self-evident that it must be removed? The Tana speaks

of Palestine, concerning which it is written [Deut. xi. 11]: "... from the rain of heaven doth it drink water." Shall we then assume that the Tana holds that the rootlets proceeding from the planted seeds extend laterally so that unless the distance be at least three spans the wall may be injured? Have we not learned [Kilaim, VII. 1] that when one plants vines, he cannot sow seeds over them, unless there be a layer of earth at least three spans in depth over the vines; and a Boraitha in addition to this taught that he might sow on the sides of the plot where the vines are planted (even if not three spans deep; hence we see that the rootlets proceed from seeds downwards, and not laterally, for in the latter case it would be forbidden to sow the seeds even on the sides)? Said R. Haga in the name of R. Jose: The seeds are mentioned, not because the rootlets proceed laterally, but because they render the ground wherein they are sown friable, thus weakening the support to the wall of the well if placed too near it.

"*And urine.*" Said Rabba b. b. Hana: One is allowed to void his urine near the wall of his neighbor; as it is written [I Kings, xxi. 21]: "*Mashtin C'kir.*" But does not our Mishna state that urine must be removed to a distance of three spans? The Mishna means urine which has been collected in a urinal. Come and hear another objection from the following Tosephtha: "One must not void his urine against the wall of his neighbor, unless it be at a distance of three spans." This is said concerning a brick wall, but in the case of one made of stones, a distance of one span is sufficient to prevent harm by softening the ground under the wall. And if the wall is built upon a rock, then it does not matter at all. Hence it contradicts Rabba b. b. Hana? This objection remains. But does he not cite a verse? The verse means even such a creature as habitually voids its urine upon a wall—namely, a dog.

"*A handmill,*" etc. Why so? Because it makes the ground vibrate. But have we not learned in a Boraitha that a horse-mill must be removed to a distance of three spans from the circumference, which is four spans from the funnel; and such a mill does not make the ground vibrate? Therefore it must be said that the reason of our Mishna is not the vibration of the ground, but the noise produced by the mill.

"*And also an oven,*" etc. Said Abayi: From this it is to be inferred that the foundation should be wider than the upper rim by one span. And this regulation relates to buying and selling;

for if its foundation did not contain a span more, the buyer may recede.

MISHNA *II.*: One must not place an oven in a lower story of a house, unless there be an empty space of four ells above it. If the oven is placed in an upper chamber, there must be at least three spans of stone-flooring under it; under a cooking stove only one span of stone-flooring is required. Yet when damage is caused, it must be repaired. R. Simeon, however, says: All these measurements are ordained so that, when they are complied with and damage is caused, one is not held responsible for it.

One must not establish a bakery or a dyer's shop under another's granary; and also not a stable. In reality, it was said that a bakery may be established under a wine store; but, at all events, not a stable.

GEMARA: But have we not learned in a Boraitha that an oven requires four spans, and a stove three? Said Abayi: That Boraitha speaks of bakers' ovens and stoves, and the oven mentioned in our Mishna is that of a private man, and similar to a baker's stove.

"*One must not establish a bakery*," etc. A Boraitha states that if the stable has been established before the granary over it, it may remain.

"*In reality, it was said*," etc. There is a Boraitha: It was allowed under a wine store, because it improves the wine; but not a stable, because it imparts a bad odor to the wine. Said R. Joseph: Our wine is harmed even by the smoke of a candle. Said R. Shesheth: A haystack is likened unto a stable (because when the hay is damp it becomes warm and emits an odor which harms the wine).

MISHNA *III.*: Partners in a yard can prevent one from establishing a store there, claiming that they cannot sleep on account of the noise produced by the people's coming and going. He, however, who makes utensils, which he sells in the market, cannot be prevented by the partners, with the claim that the noise of the hammer disturbs their sleep. The same is the case if one of them has a handmill, or if he is a teacher of children, as the claim that they cannot sleep on account of the noise is not to be considered.

GEMARA: Why, in the first part, is the claim of the noise from the people's coming and going considered, while in the latter part the noise of strange children is not considered? Said

Abayi: The latter part speaks of an instructor of children residing in an adjoining yard. Said Rabha to him: "If it were so, then the Mishna would state that in an adjoining yard it is permitted. Therefore," said he, "the latter part of the Mishna speaks of a school for children's education, and was stated after the enactment of Joshua b. Gamla. So R. Jehudah said in the name of Rabh: May the memory of Joshua b. Gamla be blessed, for, were it not for him, Israel would have forgotten the Torah, as in former times the child who had a father was instructed by him; but the one that had not, did not learn at all. The reason is that they used to explain the verse [Deut. xi. 19]: "And ye shall teach them to your children," etc., literally—*ye* personally. It was therefore enacted that a school for the education of children in Jerusalem should be established, on the basis of the following verse [Is. ii. 3]: ". . . for out of Zion shall go forth the law, and the word of the Lord out of Jerusalem." And still the child who had a father was brought to Jerusalem and instructed; but the one who had not, remained ignorant. It was therefore enacted that such school should be established in the capitals of each province; but the children were brought when they were about sixteen or seventeen years of age, and when the lads were rebuked by their masters, they turned their faces and ran away. Then came Joshua b. Gamla, who enacted that schools should be established in all provinces and small towns, and that the children be sent to school at the age of six or seven years (and after this enactment it was also enacted that the claim of the noise of school-children should not be considered).

Rabh said to the schoolmaster R. Samuel b. Shilath: If the child is under six years of age, do not accept him; but above that age, accept him and feed him (with knowledge) as you feed an ox. The same said again to him: When you must beat a child, do so with a shoe-strap only; if this produces the desired effect, then well and good; if not, leave him in the company of his comrades, whose steady progress he will see, and this will improve him. An objection was raised from the following: If one of the tenants of a yard wishes to establish an office for circumcision, a barber shop, a tannery, or a school for children, the other tenants may prevent him? It speaks of children of idolaters. But there is another Boraitha which states that if there are only two tenants, and one of them wishes to make one of the above-named establishments, the other one

may prevent him? This Boraitha also speaks of children of idolaters. Come and hear another Boraitha: He who has a house in a yard belonging to partners, must not rent this house for one of the above-named establishments; nor to a Jewish or a Gentile schoolmaster. This Boraitha speaks of the head schoolmaster of the entire city (who has all the subordinate schoolmasters under his control, and instructs them how to teach, which produces a great deal of noise).

Rabha said: Since the enactment of Joshua b. Gamla we do not transfer a child from the school of one city to that of another; but from one congregation to another we do. However, if there is a river between them, we do not, unless there is a bridge over it; but if there is only a dock, we do not. He said again: The number of children in a school must not exceed twenty-five, if there is one teacher; if the number is between twenty-five and forty, an assistant must be provided for him by the city; and if there are fifty, two teachers must be appointed. He said again: If there is one teacher who can perform his duties well enough, but there is another one who is still better, the former must not be discharged, lest his successor become too certain of retaining the position and will not attend to his work properly. R. Dimi of Nahardea, however, said: On the contrary, he will be even more diligent, as the jealousy of scholars increases wisdom. Rabha said again: If there are two teachers, one of whom is a good expounder, but is not particular about the exact pronunciation of the words in the Scriptures, while the other is particular in the latter respect but is not so good an expounder, the former should be appointed, as the errors will be corrected by themselves. R. Dimi of Nahardea, however, said: On the contrary, an error impressed upon the mind of a child remains there forever (therefore the latter should be given the preference), as it is written [I Kings, xi. 16]: "For six months did Joab remain there with Israel, until he had cut off every male in Edom." When he came before David, and was asked why he had done so, he said: Because it is thus written [Deut. xxv. 19]: ". . . thou shalt blot out each *zochor* (male) of Amalek." Said David to him: But we read *zoicher* (remembrance, meaning both—males and females)! And Joab answered: "My master instructed me to pronounce *zochor*."* He then went to his master, and questioned him

*The Scriptures were then written without vowels, these being added at a later time.

how to pronounce this word, and he answered *zochor*. So he took out his sword, and wanted to kill him. And to the question of the master, "Why?" he answered: Because it is written [Jer. xlviii. 10]: "Cursed be he that doeth the work of the Lord negligently." And his master rejoined: "Let, then, this man (myself) remain in this course," and he answered him, quoting the end of the verse: "And cursed be he that withholdeth his sword from blood." Some say that he slew him, and others say that he did not. Rabha said again: An instructor of children, a planter, a butcher, a barber, and a scribe of the city are to be considered as if they were already warned (*i.e.*, if they neglect their duties they may be discharged without previous notice); as the general rule regarding this is: All irreparable damage done by a specialist, who is appointed as such, is to be considered as if he were previously warned. (An instructor of children who has spoiled a child cannot repair this harm; and the same is the case with a planter who has spoiled the trees; a butcher who, through his neglect, has made the meat illegal for use; a barber who has killed a man by performing venesection; and a scribe who has written the Holy Scrolls fallaciously.)

R. Huna said: If one of the inhabitants of an alley establishes a handmill there, and another one comes to do the same, the law gives the former the right to prevent the latter; for he may claim: "You are cutting off my livelihood." He is supported by the following: Fishermen must remove their nets from a fish which has already been marked by one of them while it was trying to escape from him to a distance that a fish is usually able to traverse. And to the question, How far is it? Rabba b. R. Huna said: "The distance of a parsa"? Nay, with fish the case is different, as they place spies (to look out for bait, and the former fisherman is certain that the fish will go to his bait and then he will surely catch it; but here his comrade may say to him: "I am not injuring your livelihood, as your customers will go to you and mine to me").

Said Rabhina to Rabha: Shall we assume that R. Huna is in accordance with R. Jehudah, who said (Middle Gate, p. 143) that a storekeeper must not furnish little children with presents of nuts, etc., for the purpose that they may call again—and the sages allowed this? Nay, it may be said that R. Huna's theory is in accordance with that of the rabbis also, as there they allow this for the reason that the storekeeper may say, "I bestow

nuts, you may give plums"; but here the claim, "You are cutting off my livelihood," is a right one, even in accordance with the rabbis.

An objection was raised. One may establish a store or a bath-house near or opposite to that of his neighbor, and the latter cannot prevent him from doing so, for he may say: "You can do business in your establishment, and I will do business in mine." (Hence this contradicts R. Huna's theory?) On this point Tanaim of the following Boraitha differ: "The inhabitants of an alley may combine to prevent one from another alley from opening a tailor shop, tannery, children's school, or any other specialist's establishment; but they cannot do so against an inhabitant of their own alley. R. Simeon b. Gamaliel, however, maintains that the majority can prevent an inhabitant even of their own alley."

R. Huna b. R. Joshua said: "It is certain to me that the inhabitants of one city have a right to prevent one of another city from competing with them, provided he does not pay the duties of the city. It is also certain to me that an inhabitant of an alley cannot prevent another inhabitant of the same alley; but I doubt whether an inhabitant of one alley can prevent one of another alley." And this question remains undecided.

Said R. Joseph: R. Huna, who prohibits competition in any specialty, admits that concerning instructors of children no competition is to be considered; as the master said that the jealousy of scholars increases wisdom. Said R. Na'hman b. Itz'hak: R. Huna also admits that no competition is to be considered in the case of peddlers in large cities, as the master said that Ezra has enacted for Israel that peddlers shall travel in the large cities, for the purpose that the daughters of Israel might easily procure their ornaments. This is only concerning travelling dealers; but the establishment of a stationary place may be prevented. And if the peddler is a young scholar for whom it is a humiliation to travel, he may be permitted to establish a stationary place; as Rabha permitted R. Yashia and R. Obadiah to establish a place of business against the then existing law of that city, saying that because they were scholars they would be hindered in their study by travelling.

There were three basket dealers who brought baskets to Babylon, and the inhabitants of the city prevented them. So they came before Rabhina, who said: They come from the country, and may sell their goods to countrymen who come

here on the market day; but only on that day, and in the market only, but may not traffic with their goods in private houses of the city.

There were wool dealers who brought wool to the city of Pumnahara, and the inhabitants there prevented them. They came before R. Kahana, who said to them: "They have a right to do so." They, however, claimed that they had to collect their debts, which must take time, and they had nothing to live on if they should be prevented from selling their goods; and he allowed them to sell as much as they needed for a livelihood only, while they were there, but not more.

R. Dimi of Nahardea brought dry figs in a boat. Said the Exilarch to Rabha: Go and see whether he is a scholar; then you may hold the market for him. And Rabha sent R. Ada b. Abba to examine him. He questioned him about something of the Law, which he could not answer. So R. Dimi said to him: Is the master Rabha? He tapped him good-naturedly on the sandal, and answered: "From myself to Rabha there is a great difference; but, nevertheless, I am your master, while Rabha is the master of your master." In consequence of this, the market was not held for him; and R. Dimi lost on his dry figs, and came to complain before R. Joseph, saying: See, master, what was done to me! And he answered: The One who neglected not to take revenge for the shame of the king of Edom, shall not neglect to revenge your shame. (The shame of Edom, as it is written [Amos, ii. 1]: ". . . because he burned the bones of the king of Edom into lime.") Consequently R. Ada's soul has gone to its rest. Then R. Joseph said: *I* have punished him, for I have cursed him. R. Dimi said: *I* have punised him, for he had caused my loss on the dry figs. Abayi said: *I* have punished him, for he used to say to the rabbis: While ye are licking bones in the college of Abayi, would it not be better for you to eat fat meat in the college of Rabha? And Rabha said: *I* have punished him, for, when he used to go for meat, he used to say to the butcher: You must give me meat before you give it to the servant of Rabha, as I am better than he. R. Na'hman b. Itz'hak said: *I* have punished him. For R. Na'hman b. Itz'hak was the head of the preachers in the days before festivals; and every day, before preaching, he reviewed his sermon together with R. Ada b. Abba. On that day, however, on which R. Ada b. Abba died, R. Papa and R. Huna b. R. Joshua detained him, so that he should explain to them what Rabha

lectured on the last Sabbath concerning cattle tithe, and he repeated for them all that Rabha said. Meanwhile the time for R. Na'hman's preaching arrived, and R. Ada did not call him. Said the rabbis to R. Na'hman: Why does the master sit? It is already dawning, and you have to go to preach. And he answered: I am sitting and waiting for the coffin of R. Ada. And, indeed, R. Ada's death was soon announced. It seems, therefore, that R. Na'hman had punished him.

MISHNA *IV.*: If one's wall is attached to that of his neighbor, he must not build a wall parallel to it unless he leaves an interval of four ells. One must also not build a wall opposite the windows of his neighbor, wherever they are to be found, unless it be at a distance of four ells.

GEMARA: But the Mishna declares that his wall was already attached to that of his neighbor. Who gave him the right to do so? Said R. Jehudah: It means that if one wished to do so he must not, unless he left the above-mentioned space. Rabha opposed: "But the Mishna states that it was already attached?" Therefore he said that the Mishna meant to say thus: If there was already a wall at a distance of four ells from that of his neighbor, and it fell, he must not build another one unless at the same distance, as the treading upon the earth between the two walls is useful for the strength of their foundations.* Rabh said: "The Mishna treats only about a wall of a garden (because, as inside there is no treading upon the earth near the wall, it needs the treading outside); but concerning a wall of a yard, it does not matter. R. Oshia, however, maintains that the same is the case with a wall of a yard also. Said R. Jose b. Hanina: And they do not differ; as the former speaks of an old town (where the ground is already trodden), while the latter speaks of a new town.

Our Mishna states that, for windows, wherever they may be placed, a space of four ells is needed; to which a Boraitha adds: "If a window is placed at the top, the wall in question must reach such a height that when the owner stands upon it and stoops, he should be unable to see anything by looking in at the window. And if a window is placed at the bottom—to such a height that he could not see when standing upon it. And if the window be opposite the wall, he must leave such a space as would not darken the window." We see, then, that the reason of the

* This explanation of Rabha does not very well justify his own opposition, and it is, indeed, objected to by Tothpath, without any answer following it.

regulation concerning a parallel wall is the darkening, but not the treading mentioned above? The Boraitha speaks of a side-wall. How much space, however, must one leave, in order that the window will not be darkened? Said R. Jyobha, the father-in-law of Ashian b. Nadbach, in the name of Rabh: As much as the width of the window. But from such a height one can still look in at the window? Said R. Zebid: He speaks of a wall with a gable-top. But does not the Mishna state four ells? This presents no difficulty. The Boraitha speaks of one side-wall to which the space of the width of a window suffices; and our Mishna speaks of two side-walls; then four ells are needed, so that the window be not darkened. Come and hear: One must leave a space of four ells near the drains of his neighbor's roof, so that the latter may be able to place a ladder there. (It speaks, in case the owner of the house is allowed to direct his drains to the neighbor's yard; and, while he allows him this, he must also allow him a space for a ladder.) We see again that the purpose of leaving the space is for placing a ladder, and not for treading upon the earth? It speaks of a slanting roof overhanging the neighbor's yard, with the drains placed at the edge, which does not prevent the treading in the yard under it; and, therefore, there could be no reason but the latter.

MISHNA *V.*: One must remove the ladder in his yard from his neighbor's pigeon-coop to the distance of four ells, that a weasel should be unable to jump from it to the latter; and also his wall from his neighbor's roof-drains to a distance of four ells, to enable his neighbor to place a ladder there.

GEMARA: Shall we assume that our Mishna is not in accordance with R. Jose, who says farther on that everybody may do on his property what he pleases? This Mishna can also be in accordance with him, as R. Ashi said: When I was at the house of R. Kahana, he said that R. Jose admitted that one is responsible for any damage done to his neighbor by his arrows (*e.g.*, if he places a ladder so that it would be easy for a weasel to jump from it to the pigeon-coop). But, after all, this is not direct damage, but *germon?* (See First Gate, p. 125.) Said R. Tubi b. Mathna: We infer, then, from this, that to cause damage by *germon* is forbidden (*i.e.*, indirect damage).

R. Joseph had in his yard small date-trees, under which barbers used to perform venesection; and ravens, while coming to consume the blood, caused harm to the dates; and R. Joseph commanded: "Remove the *cur-cur* from my property!" (*i.e.*,

that the barbers should not be allowed any more to do their work there, and then the ravens would not come for the blood). And to Abayi's question: Are not the barbers a *germon?* he answered with the declaration of R. Tubi b. Mathna just quoted. But had not the barbers already made there a *hazakah?* To this R. Na'hman in the name of Rabba b. Abuhu said: There is no *hazakah* concerning damages. But was it not taught that, regarding this, R. Mari said: "As, for instance, smoke, which injures the eyes," and R. Zebid said: "As, for instance a toilet, which is disgusting to the sight"? Said R. Joseph: To me, who am tender-hearted, the blood is as disgusting as the things just mentioned.

MISHNA *VI.*: A pigeon-coop must not be placed within fifty ells of the town: nor has one a right to make a pigeon-coop on his own property, unless his property extends to fifty ells on each side. R. Jehudah said: "He must have four kurs on each side—the space which a dove can cover at one flight without resting." If, however, one has bought one, he is in his right even when there is only a quarter of a kur of space.

GEMARA: Are fifty ells sufficient for this? Have we not learned in a Boraitha that a net for doves must not be spread unless the locality be thirty *riss* distant (four miles) from an inhabited place? Said Abayi: "As far as flying goes, it is to a great distance; but with fifty ells it usually gets enough of food" (after which it flies thirty *riss;* hence beyond the fifty ells it does no harm to the gardens or vineyards). But does not a Boraitha state that in an inhabited place even within a hundred miles one must not spread a net? Said R. Joseph: This speaks of the case when there are vineyards, so that they fly from one vineyard to another, and so they can fly through a much greater distance. And Rabha said that it speaks of a case where there are many pigeon-coops. If it is so, why does the Boraitha state that one hundred miles from a city one must not do so, because he can catch doves from another pigeon-coop, even not in the city? It may be said that the pigeon-coops in question were his own, or they were ownerless.

"*He is in his right,*" etc. Said R. Papa, and according to others R. Zebid: From this it is to be inferred that the court has to open the mouth of a buyer or of an heir to claim *hazakah.* (*I.e.*, if the plaintiff claims that the estate is his and brings evidence that such estate is his or his parents', and the defendant says, "I inherited it from my parents," or 'I bought it from so

and so, who has ocupied it for so many years," and brings witnesses to his statement, but the witnesses cannot testify that he who occupied it before bought it or inherited it from some one, then the court must consider the defendant's claim; and by the expression "open the mouth," it is meant that the court may say to the defendant: Look for evidence that the one from whom you bought it or inherited it had it in his occupancy for so many years.) What news do they come to teach us? Does not a Boraitha state farther on that if the defendant claims inheritance it is not necessary for him to say when the bequeather bought it? It was necessary for them to teach that the same is the case when the defendant claims "I bought it." But this is also stated farther on [Chapter III., Mishna 10]? Their statement was nevertheless necessary, for the following reason: From the case in the quoted Mishna one might say that, because it speaks of a yard which was near the public thoroughfare, the claim is to be considered a right one; for if it were not as he says, the public would prevent him; or, at his request, the public have relinquished their right to that yard. But here, in a private case, it is different; and if this case only were stated, one might say that it is to be taken into consideration, as a private party usually settles the difference, or else he relinquishes his right; but there, in the case of the public, with whom can he settle, or who can relinquish? Therefore both cases were necessary to be stated.

Again—"he is in his right" (*hazakah*). But did not R. Na'hman in the name of Rabba b. Abuhu say that there is no *hazakah* in regard to damages? Said R. Mari in the name of Rabh: This is said only concerning smoke, as mentioned above.

MISHNA *VII.*: A little dove that is found within fifty ells of a pigeon-coop belongs to the owner of the latter; if outside of fifty ells, it belongs to the finder. If it is found between two pigeon-coops, it belongs to the nearer one; but if in the exact middle, it is to be divided.

GEMARA: Said R. Hanina: In a case which we should judge by a majority, it would be so; and if, according to proximity, it would be different, the decision by a majority must be taken into consideration; and although both majority and proximity are biblical, nevertheless majority has the preference.

R. Zera objected: It is written [Deut. xxi. 3]: "The city which is the nearest," etc. Does it not mean even if there are other cities which are more populous than the nearest one?

Nay; it means if they are not. But even then, why should not the majority of the *world* be considered? It means, if the city in question is situated among the mountains, where it is not usual for robbers to come from a distant place. But does not our Mishna state that a dove within fifty ells of the pigeon-coop belongs to it, even when there are others outside of the fifty ells which have more doves than the nearest one? Nay; it means when there are not. If it is so, how is the latter part, which states, "if outside of fifty ells, it belongs to the finder," to be understood? If there are no other pigeon-coops, it can only be from that one? It speaks of a pigeon which can hop only; and R. Uqba B. Hama said that a pigeon which hops cannot do so more than fifty ells. R. Jeremiah then questioned in the college: How is the law if one foot was within the fifty ells and the other without? And for this question he was driven out of the college.

Come and hear another objection from our Mishna, which states that if it is found between two pigeon-coops, it belongs to the nearer one. Does it not mean even when the farther one has more doves? Nay; it means when both have an equal number. But why, then, should the majority of the world not be considered? It speaks of a case when vineyards occupy the whole distance between the two pigeon-coops, and the pigeon is found on a walk within the vineyard; and then it cannot be supposed that it came from anywhere else, as it is known that a hopping dove does not go out of sight of her pigeon-coop. Hence she must be from one of these two in question; as, if she were from another one, she could not see it on account of the trees and partitions.

It was taught: A barrel of wine floating on a river, if found opposite a city of which the majority of the inhabitants are Jews, it may be used; if opposite a city of a majority of Gentiles, it must not be used. So said Rabh. Samuel, however, maintains that even when the majority are Jews it is also prohibited, lest perhaps it came from Dagra (a country near the river Euphrates, where there were no Jews). Shall we assume that their point of difference is the above statement of R. Hanina—that one is in accordance with him and the other is not? Nay; both agree with R. Hanina, and the point of their differing is thus: One maintains that if this were from Dagra, it would have sunk while floating in the bays formed by the projecting rocks along the coast from Tyre to Accho, and in the shallow waters

caused by melting snow; and the other maintains that because the stream in the river is strong, it could reach here.

A pitcher of wine was found in a vineyard of *arla* (the third year after planting); and Rabhina allowed to use it. Shall we assume that he did so because he holds with R. Hanina's theory? Nay; his reason was because if it were stolen from this vineyard they would not have hidden it in the same. This is only concerning wine (because the thief would not leave the wine lest the presser of the grapes should find it); as for grapes, however, they would not fear to leave them where they were stolen and take them away afterwards. There were some leather bags of wine which were found among the vines of a vineyard belonging to a Jew; and Rabha permitted their use. Shall we assume that he did so because he does not hold with R. Hanina's theory (as the majority of men are Gentiles, and not Jews)? Nay; his reason is that all the pressers and those that pour the wine into barrels are Jews. This law, however, applies only to large leather bags, but not to small ones, for fear that they were dropped by travellers, the majority of whom are Gentiles; and even if there were large ones with them, the law nevertheless applies, for fear that they were dropped by a traveller upon an ass, who had hung them on both sides of the ass.*

MISHNA *VIII.*: In planting a tree, a space of twenty-five ells must be left outside of the town; for a carob or a sycamore, fifty ells are needed. Aba Shaul said: "For a wild tree, fifty ells." If the city was built first, the tree might be cut down without paying for it; but if the tree was planted first, it is to be cut down and paid for; if doubtful as to which was there first, it is to be cut down without paying for it.

GEMARA: What is the reason of all this? Said Ulla: "Because of the beauty of the city." But why not because it is not allowed to make a field of the open space around the town, and *vice versa?* It means to say that even according to R. Elazar, who holds that this is allowed, here it is not to be tolerated, because it spoils the beauty of the city. And also according to the rabbis, who allow to plant trees in an open space belonging to the city, but not seeds; here, concerning a single tree they would not allow it, as it spoils the beauty of the city. And whence do you know that the rabbis make a difference between

* The term in the text is *abruri*, and Schönhack maintains that it originates from the Greek ἀβαρης, which means *without weight*, the first Hebrew *r* being interpolated.

seeds and trees in this respect? From a Boraitha [Erubhin, p. 57]: "If a wood-shed of more than two saahs . . . was used to sow grain . . . things must not be moved therein . . . If, however, trees were planted in the greater part of it, things may be carried therein." The Mishna states that if the tree was planted first, it must be cut down and paid for; but why should the owner of the tree not claim that it should be paid for, and then cut down? Said R. Kahana: Because a pot belonging to partners is neither warm nor cold (it means that one relies upon the other to warm it or to cool it, and it remains as it was); and here also, if he should wait until he got the money, each of the inhabitants would refer him for payment to the next one, and so the trees would remain indefinitely; therefore it is to be cut down, and the money should be collected through the court.

"*If there is a doubt*," etc. Why is this case different from that of a tree and a well, concerning which, if there is a doubt as to which was there first, the tree must not be cut down? Because there, if it is certain that the tree was there first, it must not be cut down, the same being the case when there is a doubt; while in our case, even when it is certain that the tree was planted first, it must be cut down, the same being the case when there is a doubt. And concerning the payment for it the city may say: Bring evidence that your tree was planted first, and then you will get the money.

MISHNA *IX.*: A barn must not be placed within fifty ells of the town; the same is the case if one wishes to make a barn on his own property—he may do so, provided he has fifty ells of space on each side of it. One must also remove a barn from the plants and from the newly ploughed field of his neighbor (which must wait a year before sowing), to a distance sufficiently great to prevent any harm to the plants or the field.

GEMARA: Why, in the first part, is a space of fifty ells required, and in the second part a space only large enough to prevent harm. Said Abayi: The latter part of the Mishna speaks of a temporary barn, and not of a permanent one. What is called a temporary barn? Said R. Jose b. Hanina: If one does not winnow with the shovel. R. Ashi, however, maintains that there are no two parts in the Mishna at all, only the latter part is an explanation of the first, thus: Why must a permanent barn be removed from the city fifty ells? For the purpose that it shall not do any harm to the city. An objection was raised from the following: "A permanent barn must be removed fifty

ells from the town, and the same distance must be allowed to one's cucumbers, plants, and a ploughed field, to prevent damage." Now this is correct only according to R. Ashi's explanation; but it contradicts Abayi. The difficulty remains.

However, it is correct only concerning cucumbers, etc., as the dust of the barn settles upon their hearts and spoils them; but what harm can this do to a ploughed field? Said R. Aba b. Zabda, according to others b. Zutra: Because the dust of the barn increases the amount of manure in the field (and spoils the seeds).

MISHNA *X.*: Carcasses, cemeteries, and tanneries must be removed to a distance of fifty ells. A tannery must not be established except on the east side of the city; R. Aqiba, however, maintains that it may be established on every side except the west, and a space of fifty ells is to be left. One must also remove his pond for steeping flax from a neighbor's herbs; garlic from onions; and mustard from bees. But R. Jose allows mustard.

GEMARA: The schoolmen propounded a question: What does R. Aqiba mean? On each side he may establish without the space of fifty ells, excepting the west side, where the fifty ells are necessary; or does he mean that on each side he may establish, provided he leaves the space of fifty ells, except the west side, where he must not do so at all? Come and hear the following Boraitha: "R. Aqiba said: On each side one may establish a tannery, if he leaves a space of fifty ells, excepting the west side, where he must not do so at all because of its frequency." Said Rabha to R. Na'hman: "What does the expression frequency mean—does it mean frequent winds? Did not R. Hanan b. Aba say in the name of Rabh, that four winds are blowing every day and the *north* wind blows with them? Therefore the expression frequency means that the Shekhinah rests there frequently." As R. Joshua b. Levi said: "We must be grateful to our forefathers for having informed us of the place where we are to pray; as it is written [Neh. ix. 6]: 'And the host of the heavens bow down before thee.'" R. Aha b. Jacob opposed: "Perhaps it means, on the contrary, that they are praying at the east side, and then they step backwards, as a slave does usually before his master; and when they come to the west side, they bow." Hence the Shekhinah is in the east side. The objection remains.

R. Jose, however, holds that the Shekhinah occupies every

place, as he said: It is written [ibid., ibid.]: "Thou indeed art the Eternal One alone: it is thou that hast made the heavens," etc. Thy messengers are not as the messengers of human beings, who usually return from the place to which they were sent, to that whence they were sent, announcing that they have fulfilled their duty. Thy messengers, however, are doing the same in the very place to which they were sent; as it is written [Job, xxxviii. 35]: "Canst thou send out lightnings, that they may go, and say unto thee, 'Here are we'?" It does not read that they *come* and say "Here are we," but that they *go* and say it in the place to which they were sent: hence the Shekhinah occupies every place. And R. Ishmael also holds the same, inferring it from [Zech. ii. 7]: "And, behold, the angel that spoke with me went out, and another angel came out to meet him." It does not read *after* him (*achrov*), but *against* him (*likrono*): from which it is to be inferred that the Shekhinah is everywhere. And R. Shesheth also holds so, as he (who was blind) said to his servant: Raise and turn me for praying to any side of the world excepting the east; not because the Shekhinah is not resting there, but because the *minim* have decided that one must pray only towards the east side. R. Abuhu, however, maintains that the Shekhinah is resting in the west, as he said: Why is the west side called *Oriah?* Because it is filled with the air of God.*

R. Jehudah said: It is written [Deut. xxxii. 2]: "My doctrine shall drop as the rain"; which means the west wind, which comes from the neck of the world;† "my speech shall distil as the dew," which means the north wind, which makes gold cheap (because it brings hunger, and that renders gold cheap), as it is written [Is. xlvi. 6];‡ "as heavy rains upon the grass," means an east wind that makes storms in the world;§ "and as showers upon herbs," means a south wind, which brings beneficent rain and causes growth of grasses.

There is a Boraitha: R. Elazar said: The world is like a balcony without the fourth wall; and when the sun arrives in the

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* Rashi says he has heard that in the Persian language *Oriah* means west; he himself, however, maintains that, on the contrary, *Oriah* (orient) means east. And it is so called because the Shekhinah rests on the west side, facing east. Hence the east side is His air; *avir*, which contains the first four letters of *Oriah*, in Hebrew means *air*.

† The word in Hebrew is *yaarof;* and *ohraf* means *neck*.

‡ The term in Hebrew is *zol* in both passages—literally, *cheap*. The translation certainly differs in both, according to the sense.

§ The term is *sair*, which means also *storm*.

evening at the northwest corner, it is diverted by this wind and ascends above the sky. And R. Joshua said: The world is like a tent which is fenced on all sides, and when the sun arrives in the evening at the northwest corner, it turns around and returns beyond the sky; as it is written [Eccl. i. 6]: "Going toward the south, and turning round toward the north, the wind moveth round about continually; and around its circles doth the wind return again." "Going toward the south"—during the day; "and turning round toward the north"—during the night; "moveth round about"—means facing east and west, so that sometimes, when the days are long, it goes through them, and when the days are short, it goes around them. R. Elazar used to say [Job, xxxvii. 9]: "Out of his chamber cometh the whirlwind," which means the south wind; "and out of the north, the cold," which means the north wind. "From the breathing of God ice is given"—means the west wind; "and the broad waters become solid"—means the east wind.—But did not the master say that the south wind brings beneficent rain, etc.? This presents no difficulty: If the rain comes slowly, it makes the grass grow; but if it comes down in torrents, it does harm.

R. Hisda said: It is written [ibid., ibid. 22]: "The golden light that cometh out of the north"—it means the north wind, which makes gold cheap, as it is written in Isaiah, verse cited above.

Raphram b. Papa in the name of R. Hisda said: "Since the Temple was destroyed, the south wind has never brought rain, as it is written [Is. ix. 9]: 'And he snatcheth on the right hand,* and is yet hungry; and he eateth on the left hand, and is not yet satisfied; they shall eat every man the flesh of his own arm.' It is written also [Ps. lxxxix. 13]: 'The north and the south—these hast thou created,' etc." The same said again in the name of the same authority: "Since the Temple was destroyed, the rains do not come from the good treasure; as it is written [Deut. xxviii. 12]: 'The Lord will open unto thee his good treasure, the heaven, to give the rain of thy land,' etc. From which it is to be seen that when Israel did the will of the Omnipotent, and Israel was in his own land, the rain came from the good treasure; and now that Israel is no more in his own land, the rain does not come from the good treasure."

R. Itz'hak said: He who desires to increase his wisdom shall

* The expression for *right hand* is *yomin*, and in the Psalms the expression for *south* is also *yomin*; hence the analogy.

recite his prayers towards the south; and he who desires to become rich shall do so towards the north; and as a mark in aid to remembering this direction, may be taken the fact that in the tabernacle the golden table was placed on the north, and the candelabrum, which gives light (wisdom)—on the south. And R. Joshua b. Levi said: One shall always recite his prayers towards the south, as when his wisdom shall increase, he shall also become richer; as it is written [Prov. iii. 16]: "Length of days is in her right hand: in her left are riches and honor." But did not R. Joshua b. Levi say that the Shekhinah is in the west? He does not mean that he should stand in the south exactly, but that he should stand in the west (southwest corner) and incline himself towards the south.

Said R. Hanina to R. Ashi: Ye who are located on the north side of Palestine must recite your prayers towards the south (so that you shall face Jerusalem). And whence do we know that Babylon was situated north of Palestine? From [Jer. i. 14]: "Out of the north shall the evil break forth," etc.

"*A pond for steeping flax*," etc. There is a Boraitha: "R. Jose allows mustard; as the owner of it may claim: 'Instead of telling me that I should remove my mustard from your bees, it is for you to remove your bees from my mustard, for they come and consume its blossoms.'"

MISHNA *XI.*: From a well a distance of twenty-five ells must be left when planting a tree; and fifty ells when planting sycamores or carobs. It makes no difference whether it be above or alongside. If the well has been there first, the tree must be cut down and paid for; but if the tree has been there first, it may remain. The same is the case when there is a doubt. R. Jose, however, maintains that even when the well was there before the tree there is no necessity for cutting down the latter, as one digs on his property while another plants on his own.

GEMARA: There is a Boraitha: "It makes no difference whether the well be below the tree or *vice versa*"? This would be correct when the tree is above the well, as its roots injure it; but if the well be above the tree, what harm can be done? Said R. Haga in the name of R. Jose: Because the roots render the earth friable, and thus harm the bottom of the well.

"*R. Jose, however, maintains*," etc. Said R. Jehudah in the name of Samuel: The Halakha prevails in accordance with R. Jose. And R. Ashi said: When I was with R. Kahana, we came to the conclusion that R. Jose admits that when one's arrows do

damage, etc. (see above, p. 68). Papi di Unaha, who was poor and afterwards became rich, built a palace. In the neighborhood were established poppy presses; and when they were in operation the palace used to shake. He came to complain before R. Ashi, who told him what R. Kahana said to him. But how much should the palace shake to make the presses reponsible? When a pitcher is on the roof of the palace and its cover shakes.

The disciples of Bar Marian b. Rabbin used to card flax, and the dust of it harmed the men that passed by; and they came to complain before Rabhina, who said to them: That which was said, that R. Jose admits that one should be made responsible for the damage caused by his arrows, was said only when they come from him directly; here, however, as the dust does not come directly, but is blown by the wind, there is no responsibility. Mar b. R. Ashi opposed: Why should it be different in the case of winnowing, when the wind assists one, concerning which it is said, in the First Gate, that he is responsible? When this was said before Miramar he decided that Mar was right in his supposition, and Marian's disciples were responsible. But to Rabhina: Why should this case be different from that of a spark that proceeds from under the hammer and does damage, in which case he is responsible? "There one is pleased that the sparks should escape outside and not inside—where they may cause harm; but in our case they are not pleased at all that the dust should escape where men pass."

MISHNA *XII.*: One must not plant a tree near to his neighbor's field, unless it be at a distance of four ells; and it makes no difference whether it be vines or other trees. If, however, there is a fence between the two estates, each of them may plant on his side of the fence. If the roots spread to the estate of one's neighbor, the latter may replace them three spans deeper, so that they shall not hinder in ploughing. If he has to dig a pit or a cave, he may cut off the roots which prevent him from doing so, and the fuel is his.

GEMARA: There is a Boraitha: "The four ells in question are for the purpose that the owner of the vineyard should be able to work it up." Said Samuel: "This is said only concerning Palestine, where they have long ploughs; but in Babylon, where the ploughs are short, two ells suffice." And the same is stated in the following Boraitha: "One must not plant a tree near his neighbor's field, unless he leaves a space of two ells."

And as this contradicts our Mishna, which states four ells, it must be explained that the Boraitha speaks of Babylon, and is in accordance with Samuel's theory. Infer from this that so it is.

Rabha b. R. Hanon had trees at the boundary of R. Joseph's vineyard; and birds which used to rest on the trees descended into the vineyard and did harm. And R. Joseph told him to cut down his trees. And to his claim that the trees were placed at the prescribed distance, R. Joseph said: "This is prescribed only for trees, but for vines more space is required." But does not our Mishna state that there is no difference between vines and trees? R. Joseph rejoined that it means a tree from a tree, and vines from vines; but from a tree to vines more space is required. Said Rabha: "I shall not cut it down; as Rabh said that a tree which bears fruit to the measure of a kab is forbidden to be cut down; and also R. Hanina said: 'Shakkhath, my son, would not have died if he had not cut down a fig-tree before the time; but you, masters, may cut it down if you like.'"

R. Papa had trees at the boundary of R. Huna b. R. Joshua's estate. At one time he found him digging and cutting off its roots; and to the question why he did so, R. Huna answered: In accordance with our Mishna, which states that one may replace the roots to the depth of three spans, in order not to prevent ploughing. Said R. Papa to him: But the master digs deeper. And he answered: I am digging an excavation, and our Mishna allows to do this. Said R. Papa: I tried to repeat for him many supports to the statement that he was not doing right, but he did not listen to me; until I reminded him about the decision of R. Jehudah, that a path that is used by the majority was forbidden to be spoiled. After R. Papa went out, R. Joshua said to himself: Why did I not oppose also this claim of his, with that this was said only within sixteen ells from a tree; but in my case it was outside sixteen ells, and the cutting off of the root could do no harm to the tree.

"*And the fuel is his*," etc. Jacob of Daiba questioned R. Hisda: Who is meant by 'his'? And he answered: This we have learned in the following: "From roots of a tree belonging to a private man, which spread into the estate of the sanctuary, must not be derived any benefit; but if one has so derived, he is not liable for a sin-offering. This can be correct only when it is said that the roots go with the tree; therefore one is not liable for a sin-offering. But if it should be said that they go with the estate wherein they spread, why should one not be liable? But if

the theory that the roots go with the tree remains, how is the latter part of the Mishna to be understood: If the tree is from the sanctuary, and its roots spread into a private estate, the same is the case? Now, if the roots go with the tree, why is one not liable when he derives benefit from it? This objection cannot hold good, as it speaks of a root that grew after the tree had already been sanctified; and there is a Tana who holds that upon the growth which takes place after sanctification no transgression is considered. Rabhina, however, says that there is no contradiction in that Boraitha, as the first part speaks of the roots which were within sixteen ells of the tree, and the latter part of those which were outside of the sixteen ells. Hence the Mishna, which states "his," means the owner of the tree.

Ulla said: A tree which is within sixteen ells of the boundary of another's estate is considered robbery, as it derives its nourishment from another's estate, and its fruit must not be used for the firstfruit offering. Whence did Ulla deduce this? Shall we assume from the Mishna [Sh'byith, I. 7]: "Ten plants which are scattered within a field which a saah of grain can be sown in, the entire piece of land may be ploughed for the sake of the trees until the new Sabbath year comes (as the trees derive nourishment from the entire field in which they are scattered, which is not allowed in a field for sowing seeds)." How many ells are there altogether in a piece of land which is fifty ells square (this is the extent of ground in which a saah of grain can be sown), if divided into strips of one ell? Two thousand five hundred. Then each tree needs for its nourishment two hundred and fifty; and this would not correspond with Ulla's theory, as he requires sixteen ells on each side, which means thirty-two ells square. And if it should be divided into strips of one ell, it would be 1,024 ells. And shall we say from the Mishna (ibid., ibid. 5): A field with three large trees (which are scattered in the above space), belonging to three different persons, according to the Sabbatic law it counts as a tree field, so that it may also be ploughed until the new Sabbatic year? Then, of the two thousand five hundred ells each tree derives its nourishment from 833⅓ ells; but even then the quantity prescribed by Ulla differs by still more. Ulla was not particular. But non-particularity may be applied when the matter is taken rigorously; but when taken leniently (as, *e.g.*, in Ulla's case, in which the tree becomes free from the firstfruit offering), it must not be applied. Ulla meant to say, not sixteen ells square, but sixteen ells in a circle, and as

a square measures more than a circle by one-fourth, it makes only 768 ells for nourishment; and, according to the cited Mishna, each tree would need 16⅔ ells for nourishment, hence he was not particular in the two-thirds, and this makes it more rigorous—to which non-particularity applies.*

But why only sixteen ells—does not our Mishna state that a space of twenty-five ells must be left from the tree to the well? Said Abayi: "The roots spread much farther, but to a distance of sixteen ells they nourish and render the earth poor; while beyond that distance they do not." When Rabbin came from Palestine, he said in the name of R. Johanan that from a tree near the boundary, as well as from a tree whose branches are inclined towards another estate, the firstfruit offering might be brought; and there might be read in this connection the passages from the Scriptures referring hereto, as with this stipulation did Joshua bequeath the land to Israel.

MISHNA *XIII.*: If the branches of a tree are inclined towards another field, the owner of the field may cut them off to a sufficient extent, so as not to hinder a team of oxen from passing with the plough. In the case of a carob or a sycamore, however, it must be measured with a plummet (cutting off all the branches as far as they hang over the border line); and if the field is of dry land, the branches from any tree, which overhang it, may be cut off. Aba Shaul said that the same is the case with every wild tree.

GEMARA: The schoolmen propounded a question: Does Aba Shaul mean to oppose with his decision the first part of the Mishna, saying that even if it be not dry land the branches of a wild tree must be cut off; or the second part, which states that the branches from any tree must be cut off—he opposes, saying only of a wild tree, but not of a fruit-tree? Come and hear the following Boraitha: "Aba Shaul said: Every tree of which the branches overhang a dry field must be measured with a plummet, because the shade harms a dry field." Hence his opposition was to the first part. Said R. Ashi: "Even if the Boraitha did not state it so plainly, this could be understood from R. Shaul's expression in our Mishna, as it states every wild tree; and if he opposed only the second part, he would have specified a wild tree. Hence his opposition is to the first part."

* There are many commentaries on this calculation, which would be too complicated for translation, and we leave it to the mathematicians. To omit this, however, would be against our method.

MISHNA *XIV.*: The branches of a tree which overhang public ground may be cut off, so that a camel with its rider may pass freely. R. Jehudah says: A camel loaded with flax or with bundles of branches. R. Simeon says: Every tree of that kind must be measured with a plummet, because of the law of defilement.

GEMARA: Who is the Tana who holds that concerning damages we have to consider only the present time, and not the future? (As the Mishna states, it must be cut off only for a camel; and does not consider that the branches grow up again.) Said Resh Lakish: Tanaim differ in this case; and our Mishna is in accordance with R. Eliezer, who allows in a Mishna farther on to dig caves and excavations under a public ground, of a size sufficient for a wagon loaded with stones to pass. R. Johanan, however, maintains that our Mishna may be also in accordance with the rabbis of that Mishna who prohibit this, as there it is to be feared that it may fall suddenly; but here, each branch that grows up can be cut off.

"*R. Simeon says,*" etc. A Boraitha adds to this "for the purpose that it may not form a tent of defilement." Is this not to be understood from the Mishna itself? (As what other law of defilement can it mean?) If from it one may say that it meant, for fear a raven should bring something unclean and deposit it on the tree; and then it would be sufficient to cut off some branches, so that the branches should not hold anything, it comes to teach us that it means it shall not form a tent, and then it must be measured with a plummet.

CHAPTER III.

RULES AND REGULATIONS CONCERNING OCCUPANCY (HAZAKAH)—AT WHAT TIME AND IN WHAT RESPECT IT GIVES TITLE. REPLEVINS BY COURT. PROPERTIES OCCUPIED BY A DEFENDANT WHO IS MIGHTIER THAN THE PLAINTIFF BUT EQUAL IN EVIDENCE. A PROTEST AGAINST OCCUPANCY IN ONE'S PRESENCE OR ABSENCE BY ONE'S OPPONENT. THE WRITING OF BILLS OF SALE AND DEEDS OF GIFT. OCCUPANCIES WHICH CAME FROM INHERITANCE. THE OCCUPANCIES OF SPECIALISTS, PARTNERS, GARDENERS, AND GUARDIANS. OBTAINING PROPERTIES FROM THE CONTRACTING COLLECTORS OF DUTIES AND TAXES. BAILMENTS —OF WHOM THEY MAY BE ACCEPTED. PERSONAL PROPERTIES TO WHICH THE LAW OF OCCUPANCY DOES AND DOES NOT APPLY. OPENING OF WINDOWS AND DOORS TO NEIGHBORS' OR PARTNERS' PROPERTIES, AND BUILDING OF CAVES, PITS, ETC., UNDER PUBLIC GROUND.

MISHNA *I.*: The law of hazakah (occupancy) is, if one has occupied any property for three years from date to date (without any protest from another party), and this applies to houses, pits, excavations, caves, pigeon-coops, bath-houses, press-houses, dry land, slaves, and the same is with all other articles which bring fruit frequently. However, to a field not artificially watered, the three years of hazakah must not be counted from date to date. Thus, according to R. Ishmael: If one had occupied it eighteen months—viz., three months in the first year, the following whole year, and three months of the third, it is considered three years, and constitutes a hazakah. R. Aqiba, however, said: "Fourteen months—viz., one month of the first, one month of the third, and the whole second year suffices to constitute a hazakah." Said R. Ishmael: This is said of a grain field of which the products are harvested at one time; but if an orchard were within, bearing olives and figs, then, if one has harvested the grain, pressed the olives, and dried the figs, it is considered three years.

GEMARA: R. Johanan said: I have heard that the Sanhedrin of Usha used to say: Whence do we know that to constitute a

hazakah three years are needed? From the law of a goring ox; as an ox, when it gores thrice, comes out of the category "not vicious" and is placed under the category of "vicious." So, also, if one has occupied a property three years (without protest), it comes out from the control of the seller and is placed under the control of the buyer.

But if this is so, it can be said that as a vicious ox is not guilty unless he gores the fourth time, so also should it be with the hazakah, that it shall not be considered until the fourth year. Nay, that is no comparison. An ox which gores three times becomes vicious; but even then, if he has not gored oftener, what shall he pay? But here, when one has occupied any property for three years, it becomes his. But according to this, let an occupancy for which no reason can be given by the occupant be considered; and this is not permissible, since a Mishna further teaches that such is not to be considered? The reason that three years are considered a hazakah is because it approves the claim of the occupant—*e.g.*, if the plaintiff claims, "You have stolen it," and the defendant says, "I have bought it," the occupancy of three years approves the fact that the defendant tells the truth. But if to the question, "What are you doing on my property?" he has no answer, what shall the hazakah approve? Shall the court make for him such a claim as he himself does not? R. Avira opposed: If hazakah is inferred from a vicious ox, then a protest not made in the presence of an occupant should not be considered, as concerning a vicious ox the maiming must be in his presence [Ex. xxi. 29]? Nay; in this respect, there is no comparison, as there the Scripture directs that the warning shall be in the presence of the owner. But here the protest is only to show that he had not relinquished his ownership, and if he has protested for other people it suffices, as he (who has heard the protest) has a colleague, and his colleague has another, etc.; and if it is said in public, it will certainly reach the ear of the occupant. According to this, if he has occupied it three months and consumed the fruit which grew each month—*e.g.*, a *pastio*—let it be considered a hazakah? Was not R. Ishmael * of the Sanhedrin of Usha? And according to him this law holds good; as it is stated in our Mishna that if he has harvested his grain, etc., it is considered three years, according to R. Ishmael. But what is the reason of the decision of the rabbis? Said Rabha: Because for the first

* Rashbam says it is unknown to him wherefrom the Gemara took it that R. Ishmael was among the Sanhedrin in question.

three years one usually takes care of his deed; but not for more than this. Said Abayi to him: According to your theory, let a protest which is not in his presence not be considered; as the occupant might claim, "If you gave the protest to me, I would take care of the bill of sale," this claim cannot be considered for the reason stated above, "that your colleague has a colleague," etc.

R. Huna said: "The three years in question must be uninterrupted." What does he come to teach us? Is it not stated in our Mishna, three years from date to date? Lest one say that it means to exclude the case which is told in the Mishna, of a field which is not artificially watered, but if one has occupied it three years on an average it is considered a hazakah even if it was with interruption, he comes to teach us that it is not so. Said R. Hamma: R. Huna admits that in places where it is usual to let the fields rest one year, the three years are considered hazakah, although there is interruption. Is this not self-evident? The case was when he had his field in a *pagus*, where some let it rest while others did not: lest one say that the plaintiff might claim, "If it were yours, you would not make any interruption," he comes to teach us that the defendant might claim, "It was more agreeable for me this way, because after it rests a year it brings more produce." But does not our Mishna apply hazakah to houses to which testimony could be given for occupying in the day-time, but not in the night-time? (Hence a hazakah is considered even when there is no testimony that it was not interrupted.) Said Abayi: Who testifies as to the occupancy of houses? Neighbors. And neighbors are aware of the nights as well as of the days. Rabha said: The Mishna means when two witnesses came and testified: "We have rented the house from the defendant, and lived in it three years, day and night." Said R. Jimir to R. Ashi: Are the witnesses not interested in it; for if they would not so testify, they would be told to pay their rent to the plaintiff? Answered he: "Ignorant judges would give such a decision. May it not be the case that the witnesses hold the rent of the house, asking, To whom shall we pay?" Said Mar Zutra: Nevertheless, if the plaintiff requires that the defendants should bring two witnesses who should testify that they lived in the house three years, day and night, the court must listen to him. And Mar Zutra admits, if the plaintiff was a traveller who had travelled in large cities with his stock that although he does not require the testimony for day and night, the court may claim it for him. And R. Huna admits,

that in stores like those of Mehusa, which are usually occupied in the daytime only, three years is considered a hazakah.

Rami and R. Uqba, the sons of Hamma, bought a female slave jointly: one kept her the first, third, and fifth years, and the other the second, fourth, and sixth. And thereafter a claim was made concerning this slave. And they came before Rabha. Said he to them: Why did you do so—to the end that neither of you should be able to claim hazakah? As it is not a hazakah for each of you, so it is not considered a hazakah for the whole world. This, however, applies because there was no written agreement between you that she should serve you in such a manner. But if such had been written, it might be regarded the same as if it were made public, and no claim is to be considered. Rabha said: If one has used a whole field the years of hazakah, except a quarter of a saah, he acquires title to the whole field except to that which he has not used. Said R. Huna to R. Joshua: It is so if this piece was also fit for sowing. If, however, it was not fit for that, title is acquired to it also, with the field. R. Bibi b. Abayi opposed: According to your theory, how should one make a hazakah on rocky ground, if not by putting cattle or drying fruit there? The same ought to be done with that which was not fit for sowing; and because he has not done so, title is not acquired.

There was one who said to his neighbor: "What are you doing in this house?" to which he answered: "I bought it from you and have occupied it the years of hazakah." Said the plaintiff: "I used to live in the front rooms, passing through yours, and therefore I did not care to protest." And when the case came before R. Na'hman, he said to the defendant: Go and bring evidence that you have occupied the whole house alone. Said Rabha to him: Does not the law dictate that it is for the plaintiff to bring evidence?

The following case, however, contradicts both R. Na'hman and Rabha. It once happened that one said to his neighbor: "I sell you all the properties which formerly belonged to Bar Sisin." There was, however, another estate which also bore the name of Bar Sisin estate, and the buyer wanted to take possession of it; but the seller claimed that this had never belonged to Bar Sisin, and that it was only so called. And when the case came before R. Na'hman, he decided that it belonged to the buyer; and Rabha said to him: Does not the law dictate that it is for the plaintiff to bring evidence? Hence the decision of this case contradicts

the former entirely? Nay; in the former case the plaintiff was the owner of the house, and in the latter case the buyer was the plaintiff. Hence Rabha did not change his decision. And concerning R. Na'hman, he also did not contradict himself; but merely because it was named Bar Sisin, he held that it was formerly owned by Bar Sisin, and it was for the claimant, who said it was not so, to bring evidence. And this case is similar to a case where one wants to deny hazakah with a note. Would it not be said to him: Bring evidence that the note is a right one, and then only you can have this?

There was one who asked his neighbor, "What are you doing in this house?" and he said, "I bought it from you, and I have occupied it the years of hazakah." But the owner claimed that he was always out of the city and was not aware that he had been occupying this house, and therefore no protest was made. The defendant, however, stated he had witnesses to the fact that thirty days each year the owner used to be in the city, to which the plaintiff again answered: "These thirty days I was always busy in the market, and I never thought about my house." When the case came before Rabha, he decided that the owner of the house was to be trusted.

There was another who asked his neighbor, "What are you doing on my estate?" to which he answered, "I bought it from so and so, who told me that he bought it from you." Then he said: "You admit, however, that the estate was mine and that you have not bought it from me. Then go (and see the man you bought it from). *I*, however, have nothing to do with you." And Rabha decided that the plaintiff's claim was in accordance with the law.

There was another who answered to the same question as above: "I bought it from so and so, and occupied it the years of hazakah." But the owner answered: "That man is known as a robber." The defendant, however, claimed that he had witnesses that at the time he bought it he took the owner's advice. To which the plaintiff answered: "It is true I advised you to buy it, because it would be easier for me to take it away from you than from the robber." Upon which, Rabha decided that the plaintiff's claim was in accordance with the law. Is this in accordance with Admon of the following Mishna: "If one claims that this estate belongs to him notwithstanding the fact that he was a witness on the bill of sale to this field, it may be considered, because he may claim that from this man it is easier for

me to take it away than from the first. So is the decree of Admon. The sages, however, maintained that when he was qualified as a witness he lost his right." It may be even in accordance with the rabbis, as in the case of the cited Mishna he was a witness in writing; but here he only gave his advice in words and had not lost his right.

There was another case where one questioned and answered the same as above. Said the defendant: "I have witnesses that you called upon me on that evening and requested me that I should sell it to you, without your mentioning that it belonged to you." And the plaintiff replied: "I thought I would buy my estate for a small amount, instead of taking the matter into court." And Rabha, before whom the case came, decided that such a claim might be considered.

There was another case in which the defendant claimed that he bought it from so and so, and had occupied it the years of hazakah, to which the plaintiff opposed: "Here is a bill of sale, showing that I bought it four years ago from the same man you claim you bought it from." To which the defendant answered: "Do you think by the expression 'the years of hazakah,' I meant three years? I meant many years—so that I had occupied it three years before you bought it." And Rabha decided that people call many years the years of hazakah. But this can hold good only when he has occupied it seven years, so that the years of hazakah have preceded the bill of sale; but if he has occupied only six years, then the claim of hazakah cannot be considered, because the bill of sale is the greatest protest.

If two persons come before the court, one claiming, "This estate was my parents'," and the other claiming, "It was my parents'," and one of them brings witnesses that it was his parents', and the other witnesses that he had occupied it the years of hazakah? Said Rabha: The one who brings evidence that he occupied it the years of hazakah is to be trusted, since, if he wished to tell a lie, he could claim, "I bought it from you and have occupied it the years of hazakah." Said Abayi to him: "The supposition if he cared to tell a lie cannot be applied in a case where there are witnesses." If thereafter, however, the plaintiff claims: "It is true it was your parents' estate, but I bought it from you. And by what I said before, 'It was that of my parents,' I meant that this estate was so long in my possession that I looked upon it as if it were bequeathed to me by my parents"—may one change his claim before the court, or not?

According to Ula he may do so by giving a good reason; but according to the sages of Nahardea, he may not. Ula, however, admits that if the first claim was, "It was my parents', and not yours," it cannot be changed in any circumstances. The same is also the case if, before the court, he claimed so, and afterwards, as he was going out, he claimed otherwise, since it is to be supposed that to such claims he was advised by some one else, and they must not be considered. The Nahardeans, however, admit also that if this man claims, "When I said my parents' estate, I meant that my parents bought it from yours," such a claim is to be considered; and also that if one, in discussing a case outside of the court, did not mention anything of that which he is now claiming before the court, he cannot be accused of not having said so before, as it may be supposed that one does not like to tell his right claim to people in absence of the court. Said Amemar: "I am a Nahardean, and nevertheless hold that if there is a good reason one may change his former claim." And so the Halakha prevails.

If one claims, "It was from my parents," and the other claims the same, and one brings evidence that it was his parents' and that he occupied it the years of hazakah, and the other also brings evidence that he has occupied it the years of hazakah? Said R. Na'hman: Disregard the claims of hazakah which contradict each other, and decide it under the evidence that it was from the parents, which was not denied. Said Rabha to him: But do not the witnesses contradict each other, and in such a case not one of them ought to be taken into consideration? And he answered: They contradict each other as to the years of hazakah, but do they contradict themselves with regard to the parents?

Shall we assume that Rabha and R. Na'hman differ in the same way as R. Huna and R. Hisda differ? As it was taught: If two parties of witnesses contradict each other, they may be listened to in another case where there is no contradiction. R. Hisda, however, maintains that, it being manifest they are perjurers, nothing must be trusted to them.

Shall we then assume that R. Na'hman is in accordance with R. Huna, and Rabha with R. Hisda? Nay; if the decision were in accordance with R. Hisda, Rabha and R. Na'hman would not differ (as, according to R. Hisda, such witnesses cannot be used again in any case). Therefore we must say that both are in accordance with R. Huna; and nevertheless they differ, as Rabha maintains that even according to R. Huna the witnesses are fit

for another case, but in this case they must not be listened to in any circumstances. The man who previously brought evidence that he had occupied it the years of hazakah, found thereafter witnesses that the estate was his parents'. Said R. Na'hman: We dispossessed the defendant of that estate (for a good reason), and now that the circumstances have changed we may bring him in again, without fear that this would be a humiliation to the court. Rabha, or, according to others, R. Zera, objected from a Mishna in Tract Kethuboth, which states, concerning marriage, that after the court has decided no change is to be made, even in the event of new evidence being introduced. Said R. Na'hman to him: I was about to practise according to my theory. Now, as you object, and R. Hamnuna of Suria does the same, I shall not do so. However, thereafter R. Na'hman acted according to his theory. One who had seen him doing so thought it was an error on his part. In reality, however, it was not, as he did so on the basis that many other great men had decided that the humiliation of the court must not be taken into consideration.

There was one who said to his neighbor, "What are you doing on this estate?" to which he answered, "I bought it from you, and here is the deed," to which the defendant opposed that the deed was false: The plaintiff bent and whispered to Rabba: Concerning this note, his claim is right. However, I possessed, but lost, the true one; and this is a correct copy. Said Rabba: He may be trusted, since if he wished to tell a lie he would claim that the document was genuine. Said R. Joseph to him. "But, after all, what is the basis of the plaintiff's evidence? Is it not the deed in question in reality nothing else but a broken piece of clay, as he has himself admitted that it was made by him?"

There was another case similar concerning a hundred zuz in cash, in which the plaintiff admitted that the note in his hand was a false one, made instead of the genuine, lost; and Rabba took it into consideration for his reason stated above, and R. Joseph opposed him as above. And R. Iddi b. Abbin said: The Halakha prevails in accordance with Rabba if the case dealt with real estate, because we leave the estate in the possessor's hands. And the Halakha prevails in accordance with R. Joseph if the case concerned ready-money, for the same reason that we have to leave the money in the hands of the possessor (*i.e.*, according to the rule that it is for the plaintiff to bring evidence).

There was a surety who claimed that he had paid to the

lender for the borrower one hundred zuz, by showing the note. Said the borrower: "Did not I pay you?" And he answered: "But did you not take it again from me." When the case came before R. Iddi b. Abbin, he turned it over to Abayi, and Abayi sent a message to R. Iddi: Why are you doubtful in this case? Was it not you who said that the Halakha prevails with R. Joseph in case of ready-money—that is, that we leave the money with its possessor? This law, however, holds good when the surety claims he lent it again, without giving any reason; but if he claims, "I returned the money because it was not circulating," this claim must be considered, and the note is in force.

It was murmured among people that Rabha b. Sharshum had appropriated land belonging to orphans; and Abayi sent for him and asked him to tell him about the case. And he told him thus: This estate was pledged to me by the father of the orphans. I, however, had other money with him without any pledge; and after I had collected the first debt from the product of the pledge I knew, if I turned over the estate to the orphans and claimed that I had other money with their father, I should have to take an oath in accordance with the decision of the rabbis (stated above, p. 10). Therefore I kept the pledge, with the deed, until I should collect from the products what was due me, and then I would return it. And the court must take my claim into consideration in accordance with the theory of "because"—that is, because I could claim that I had bought the estate from the deceased, and I would be trusted after I had occupied it the years of hazakah, therefore my claim that I had money with the deceased must be regarded. Said Abayi to him: You could not claim you had bought it, as people are still murmuring that the estate belongs to the orphans. Therefore you must return the estate to the orphans, and when they shall be of age, you can sue them.

A relative of R. Iddi b. Abbin died, and left a tree, and another relative took possession of it. But R. Iddi claimed that he was a nearer relative, and that it belonged to him, while the other claimed that he was a nearer relative. Finally the other party admitted that R. Iddi was a nearer relative, and R. Hisda transferred the tree to R. Iddi. Said R. Iddi to R. Hisda: This man must return to me all the product of this tree which he has consumed since the death of the owner. Said R. Hisda to him: Are you the man about whom it is said that he is a great man? Your claim relies upon his admission that you are a nearer relative,

after you gave evidence; but until that time he felt sure that he was a nearer relative. Consequently he has consumed the fruit rightly, and his admission now is to be considered as if he made you a present. Both Abayi and Rabha disagreed with R. Hisda, as his admission now must be taken into consideration, even concerning the previous product.

There was one who questioned his neighbor as to what he was doing on his estate, and he answered: "I bought it from you, and occupied it the years of hazakah." However, he found witnesses for the occupancy of two years only; and R. Na'hman decided he should return the estate, and also the value of the fruit he had consumed in two years. Said R. Zebid: If he were to claim: "I did not intend to keep the estate, but had the right to consume the fruit thereof, because I rented it," he is to be trusted; for did not R. Jehudah say: If one holds a scythe and a basket, saying, "I am going to gather the dates of such and such a tree, which I bought," he is to be trusted, because one would not dare to take possession of a tree which does not belong to him? And the same is the case here, for no one would dare to consume fruit which did not belong to him. If so, why should this law not apply to an estate also? For land a deed is demanded (as nobody would buy an estate without a deed); but in hiring products, a deed is unusual, and therefore it cannot be demanded.

There was another man who questioned his neighbor as to what he was doing on his estate, and he answered, "I bought it from you and occupied it the years of hazakah," to which he brought one witness. The rabbis who were in the presence of Abayi, before whom the case was brought, were about to say that this was similar to the following case: One snatched a piece of silver from his neighbor, and the case was brought before R. Ami, in the presence of R. Abba, and the plaintiff brought one witness that he snatched. And the defendant answered: "Yes, I took it; but I did so because it was mine." And R. Ami was deliberating, "How decide this case?" Shall he repay it? There are no two witnesses. Shall we free him? There is one witness. Shall we give him an oath? The plaintiff claims that he snatched it, which is robbery, and a robber is not to be trusted with an oath. Said R. Abba to him: Consequently this man is obliged to take an oath, for which he is not to be trusted. And the law is, that he who is obliged to take an oath and cannot swear, must pay. Said Abayi to them: What comparison is this? A case

similar to R. Abba's would be if the *plaintiff* had brought one witness that he had consumed the product two years; then he would have to pay, because he would not be trusted with an oath, as concerning the consumed fruit he would be considered a robber.* But here, the *defendant* has brought a witness to support himself; and if he had another, we would leave the whole estate in his hand. Hence he cannot be considered a robber who is not to be trusted to take an oath, and therefore we cannot make him pay.

There was a boat about which two parties quarrelled, each claiming that it was his, and one came to request the court that it should take charge of the boat until he should be able to get witnesses that it was his. Should his request be granted, or not? According to R. Huna, it should; and according to R. Jehudah, it should not. But in case the request was granted and the court took charge of it, and the other party, seeing that his opponent could not find evidence, requested that the court should resign its charge and leave it to the parties, so that he who could, should take possession of it—should this request be granted, or not? According to R. Jehudah, it should not; but according to R. Papa, it might. The Halakha, however, prevails that in such a case the court should not take charge of it; but, if it was already done, it should not be released before the question was decided.

If each of the parties claim: "This estate belonged to my parents"—said R. Na'hman: "In such a case, the law of the stronger is to be applied." But why should this case be different from a case where two notes are given out on the very same date to two different persons, and the property of the debtor is sufficient for the payment of one note only, in which Rabh's decision was that the property should be divided between both creditors equally; and Samuel's, that it must be left to the consideration of the judges, so that they might give the preference to him who had more right according to their opinion? It is because there is no hope that one of them would bring evidence that he has the preference (since the notes were written on one and the same day, and even if one should bring witnesses that his note was written before the other, there is a rule that there is no priority in a

* The text contains only a few words, but very complicated; the commentators try to explain it at length, but they differ as to the meaning, and their interpretation is no less complicated. We have done the best we could, that the reader should have an idea of it.

matter of hours); but in one case there is hope that one of them may bring evidence. But why should this case not be equal to the one in Mishna 4, p. 261, Middle Gate, about the doubt when the young ass was born, and it was decided that it should be divided? There each of the parties, claiming it was born while under his control, has an equal chance; but here each of them claims the whole article to be his own, and the court cannot decide that it should be divided, since, if the claim of the one be true, the other has never had any right to it. Said the Nahardeans: If a third party from the market came and took possession of it, the court has no right to take it away from him, because there is no plaintiff. As R. Hyya taught: If one steals an article belonging to many persons, he cannot be considered a thief whom the court can compel to return it, as there is no plaintiff. Said R. Ashi: R. Hyya meant to say that he cannot be considered a thief who atones by returning the article, for he does not know whom he robbed; but the court may compel him to place the article under its charge.

"*Three years from date to date*," etc. Said R. Aba: If there are witnesses who testify that the plaintiff has loaded a basket of fruit from this field on the shoulders of the defendant, the hazakah is effected immediately. Said R. Zebid: If, however, the plaintiff claims, "I have let him this field for the products only," he is to be trusted, provided this claim was made during the three years of hazakah, but not afterwards. Said R. Ashi to R. Kahana: Why should not his claim be regarded even after three years, as, if he sold (for three years) him the fruit, what should he do before the time had elapsed? Answered R. Kahana: He should have protested before the time the hazakah elapsed, so that it should be known that the estate belonged to him. If this were not the case, the pledges of Sura, in the documents of which are written: "After the time of these pledges elapses, this estate shall be returned without any payment," how is it if the possessor of the estate should hide the pledged deed after three years, and claim, "I have bought it"—should he be trusted? Would, then, the rabbis enact such a thing as could do harm to the pledger? We must then say that the pledger, before the lapse of the time, must proclaim his protest, so that it shall be known that the estate belongs to him. The same is the law in our case.

R. Jehudah in the name of Rabh said: An Israelite who has bought a field of a Gentile, who has occupied it the

years of hazakah, claiming to have bought it from another Israelite, but had not shown any deed, the law of hazakah does not apply to the last buyer, even if he has occupied it three years or more, because he relies upon the Gentile, and the law of hazakah does not apply to Gentiles (who are mightier); and it may happen that he has occupied the estate without any right, because the Israelite was afraid to claim it (unless he shows a deed). Said Rabha: If the last buyer claims, "I was told by the Gentile that he bought it from you," he is to be trusted, because he could claim, "I myself bought it from you, and occupied it the years of hazakah." But is such a thing possible, that if the Gentile should claim the property in his own name he would not be relied upon because the law of hazakah does not apply to him, and when the Israelite claims in the Gentile's name he is to be trusted? Therefore Rabha's statement was thus: If the last buyer claims, "In my presence the Gentile bought it from you, and then he sold it to me," he is to be trusted, because he could claim, "I bought it directly from you." R. Jehudah said again: If one holds a scythe and a basket, saying, "I am going to cut off the dates from the tree which I bought of its owner," he is to be trusted, as one would not dare to go publicly to cut off products which do not belong to him. The same said again: If one has occupied a piece of land which was outside the fence of one's field (which they usually sowed for the wild beasts to feed on), he cannot claim hazakah, as the owner may say, "I did not protest because I could not have made use of it anyhow, for the wild beasts would have consumed the produce." If one of the years of hazakah happened to be a year of *arla*, it is not to be considered. And so, also, we have learned in the following Boraitha: If one of the years was a Sabbatic or an *arla* year, or one has sown it with Kilaim, it must not be considered. R. Joseph said: If in the hazakah years he harvested the stalks while yet unripe, it is not to be considered (because he has not occupied it as usual). Said Rabha: But if this was around the city of Mehusa it is to be considered, because all the farmers, on account of their cattle, are in the habit of doing so. R. Na'hman said: To land which is full of pits and cannot be worked up properly the law of hazakah does not apply, because the owner may claim, "As it was of no use to me, I did not protest." The same is the case with such fields as return no more than was sown in them. And also in the case of exilarchs, to an estate which is bought from them, or which they buy, the law of hazakah does not apply, because they

are mighty, and no one would dare to protest against them; and, also, they themselves do not care to protest.

"*Slaves.*" Does the law of hazakah apply to slaves? Did not Resh Lakish say: To every living creature the law of hazakah does not apply? Said Rabha: He means to say it does not apply before three years (*i.e.*, one cannot claim that he bought it as he may do with other personal property for which no evidence is needed when found in his possession), but after three years it does. And Rabha said again: If this slave was an infant lying in his cradle, the law of hazakah applies immediately. Is this not self-evident? He means even in case it has a mother; and lest one say that it is to be feared that its mother left it there, it comes to teach us that this is not to be feared, because usually a mother does not forget her child.

There were goats that consumed peeled barley in the city of Nahardea, and the owner of the barley caught them and would not return them until the value of the barley was paid. And his claim was of considerable amount, and the father of Samuel decided that he might claim the value of all the goats, as if he were to claim that he bought them he ought to be trusted, seeing that they were found in his possession. But did not Resh Lakish say that the law of hazakah does not apply to living creatures? Why did the father of Samuel decide (Middle Gate, pp. 306 *seq.*) that he could collect the whole value of the goats? (See there.) With goats it is different, as they are usually transferred to the shepherd. But do not goats go in the morning and evening without the shepherd? In the city of Nahardea thieves were frequently found, and the shepherds used to deliver the cattle into the hands of their owners.

"*Three months in the first year*," etc. Shall we assume that the point of difference between R. Ishmael and R. Aqiba is that one holds ploughing is a hazakah (*i.e.*, if one ploughs a field and the owner does not protest, it is supposed that he bought it from him). And one holds that it is? But how can you bear in mind that R. Aqiba holds ploughing to be a hazakah, when he means a whole month in two hazakah years? Is one day not sufficient for ploughing? Therefore we must say that, according to all, ploughing is not considered a hazakah, and the point of their difference is ripe and unripe fruits. According to R. Ishmael, the hazakah applies only to ripe fruits, and according to R. Aqiba also to unripe ones.

The rabbis taught: Ploughing is not a hazakah. According

to others, it is. Who are the others? Said R. Hisda: It is R. Aha of the following Boraitha. If one has ploughed it one year and sown it two, or *vice versa*, it is not a hazakah. R. Aha, however, says it is. Said R. Ashi: I have questioned all the great men of this generation, and they have told me that ploughing is a hazakah. Said R. Bibi to R. Na'hman: The reason of him who holds that ploughing is a hazakah is because that usually one would not keep silent if a stranger came and ploughed his land. And the reason of him who holds that ploughing is not a hazakah, is because the owner might think: "I can derive benefit from every furrow he makes with the plough on my land, so I will protest afterwards."

The inhabitants of the city of Pumnahara sent a message to R. Na'hman b. R. Hisda thus: Let the master teach us if ploughing is a hazakah or not. And he answered: R. Aha and all the great men of this generation have decided that ploughing is a hazakah. Said R. Na'hman b. Itz'hak: It was too much of him to assert, "All the great men." Are not Rabh and Samuel in Babylon, and R. Ishmael and R. Aqiba in Palestine, who hold that ploughing is not a hazakah? R. Ishmael and R. Aqiba we hear saying so in our Mishna, but where did Rabh and Samuel say so?

As R. Jehudah said in the name of Rabh: R. Ishmael and R. Aqiba were a minority of the sages, but the majority of the sages held that a hazakah is three years from date to date. And this was certainly to exclude ploughing. And concerning Samuel, said also R. Jehudah in his name: This was the opinion of R. Ishmael and R. Aqiba only; but all the other sages held that the hazakah does not apply unless one has harvested, gathered the vintage, and pressed olives, each of them three times. What is the difference between Rabh and Samuel—as, according to both, three years are needed? Said Abayi: A young tree which bears fruit on the average three times in less than three years, according to Samuel it is a hazakah, and according to Rabh it must be from date to date.

"*Said R. Ishmael . . . a field for grain*," etc. Said Abayi: From R. Ishmael's decision, that three harvestings suffice to constitute hazakah, we can understand the opinion of the rabbis opposing him: If the field contains thirty trees, each ten of which take up a space where a saah of grain can be sown, and the defendant has used ten the first year, ten the second, and ten the third, it is a hazakah, although three years have not yet elapsed

(as he has consumed in each year what was ripe). And this is to be inferred from R. Ishmael's statement that each performance of the three articles is counted as if it were done thrice, to constitute a hazakah. The same is the case with the thirty trees: the consuming of each ten is counted with the consuming of the others, and therefore it constitutes a hazakah. But this is only the case when but ten of them were ripe each year; but if more were ripe, and he only consumed ten, it is not. And the same is the case if the ten trees were ripe in one place only the first year, ten in another place the second, and ten in a third place the last year; for in order to constitute a hazakah, the trees must be scattered throughout the whole field, three or four of them growing in the space of a saah each year.

If one has made a hazakah on the trees and another upon the ground, each of them acquires title to what he holds. So said R. Zebid: R. Papa opposed; for, according to this theory, the one who has made a hazakah on the trees has nothing in the ground. So let the owner of the field say to the owner of the trees, "Cut down your trees and go." "Therefore," said he, "in such a case one has acquired title to the trees and half of the ground, and the other to the other half of the ground."

It is certain if one has sold his ground and left the trees, the ground required by the trees must be left for them; for even according to R. Aqiba, who said elsewhere that usually when one sold a thing he did so with a good eye (*i.e.*, with the intention of benefiting the buyer), this is only in case he sold him a well. We must say the stone-walls to the well on his property are also sold to him. But in this case, where he retains the trees, which make the ground poor, and also their roots may hinder the plough, it is certainly his intention that the ground needed for the trees shall remain his, as otherwise the buyer will have a right to demand from him that he shall cut down his trees. But if he has sold the trees and retained the ground, in this case the rabbis and R. Aqiba differ. According to R. Aqiba, who holds that usually the seller sells with a good eye, the buyer has a right to the growing of the trees. But according to the rabbis, who do not hold so, the buyer has no such right. And even according to R. Zebid, who said above, in the case of hazakah, that each of them has nothing in that which the other has occupied, it is only as to buyers that the one who has occupied the ground can say to him who possesses the trees, "As I have nothing in your trees, so you have nothing in my ground."

But in case of selling, according to the rule that a seller sells with a good eye, this claim cannot apply even in accordance with the opinion of the rabbis. And even R. Papa, who said above that the owner of the trees has a share in the ground, it is only in the above case where there were two buyers—the one who buys the trees and the buyer of the ground—that each of them can claim, "As the owner sold to you with a good eye, so did he to me." But in this case, according to the rabbis, who hold that a man usually sells with a bad eye (*i.e.*, with the intention of benefiting merely himself), R. Papa may also agree that, according to the rabbis' theory, the buyer of the trees has no claim to the ground. The Nahardeans said that if, of the above-mentioned thirty trees, fifteen of them were planted in the space of a saah, although he had consumed the product of all of them three years successively, it is not considered a hazakah, because he has not done as people do (*i.e.*, fifteen trees in the space of a saah cannot bear good products, and the one who possesses such usually cuts out many of them to make room for the others; and as he did not do so, it seems that he does not consider this to be his property). Rabha opposed this. For, according to this theory, one could never acquire title to a bed of a *pastio*, which is usually sown three times a year, and the overcrowding is thinned out to make space for the remainder (and when the occupant has only consumed them, and not thinned out, he does not acquire title). "Therefore," said he, "in such a case he acquires title to the trees, and not to the ground." Said R. Zera: In this case the Tanaim of the following Mishna differ: A vineyard which was planted in less than four ells' space, R. Simeon said: Concerning Kilaim, it is not considered a vineyard at all. The sages, however, maintained that it is so considered, and the middle ones are to be considered as if they did not exist (*i.e.*, the law of a vineyard, which should interfere with other kinds of seeds, is that it must be planted so that between each row of the vines four ells of space must be left; and if not, it is not called a vineyard. But according to the rabbis, the middle one is not considered; consequently there is more than four ells' space between them, and it does interfere—hence, according to this theory, of the trees in question which were overcrowded, fifteen in the space of a saah, the middle ones are not to be considered, according to the rabbis; but they are considered, according to R. Simeon).

The Nahardeans said again: If one has sold a tree to his neighbor, the buyer acquires title to it from beneath it unto the

deep. Rabha opposed. Why should it be said that the whole ground unto the deep shall be sold to him? The seller may claim: I sold it to you as people used to sell a saffron tree, of which the buyer derives the benefit as long as the tree yields fruit, but after it became withered, the buyer had to remove it and leave the ground to the seller. Therefore said Rabha: This applies only to him who claims that he bought it with the stipulation that if the tree dies he may plant another one in its place, and after he possessed it the years of hazakah. Said Mar the Elder, the son of R. Hisda, to R. Ashi: Even if it was a saffron tree, and in such a case the buyer usually cares for the valuable saffron, and not the ground beneath, what should the seller do if, after the three years, the buyer claims he has also bought the ground (so that he can plant another one)? And he answered: The seller should protest before the years of hazakah elapse, as is said above.

MISHNA *II.*: There are three lands concerning the law of hazakah: The land of Judea, the land on the other side of the Jordan, and of Galilee. If the owner of the estate was in Judea, and one has made a hazakah in Galilee, or *vice versa*, it is not considered a hazakah unless the owner of the estate should be with the occupant in one and the same country. Said R. Jehudah: The law of three years is made only for the purpose that if the owner, for instance, was in Spain, and his estate was in Judea, which is a year's journey from there, if one has occupied his estate while on the road, a year's time is given for him to be notified, and another year for his return (*i.e.*, no matter where he is, three years suffice for hazakah).

GEMARA: Let us see! What does the first Tana of the Mishna hold? If a protest in the absence of the occupant is considered, then, even when one was in Judea and the other in Galilee, he could protest; and if it is not considered, then even if both were in one country, when they are not in one city, the hazakah should not apply, as he could not protest. Said R. Abba b. Mamal in the name of Rabh: He holds that a protest not in his presence is to be considered. But our Mishna treats of a case of war, during which this protest would be of no use (because there would be no one to notify him). And why does he mention Judea and Galilee? To teach that these two countries are always considered as if there might be a war between them, as caravans going from one country to the other are very rare.

R. Jehudah in the name of Rabh said: If one runs away from a city because of crime, etc., and one occupies his estate, the law of hazakah applies. And R. Jehudah continued: After Rabh's death I said this Halakha in his name before Samuel, and he said to me: Is this not self-evident? Must, then, a protest be in one's presence? (Says the Gemara:) And, indeed, what news did Rabh teach with this statement, unless that a protest not in one's presence is considered? He already said so elsewhere. With this statement he teaches us that, even when the protest was before two witnesses who were not able to notify the occupant, it is nevertheless considered a protest. As R. Anan said: Mar Samuel has explained to me his opinion that only when one protested in the presence of two witnesses who are able to notify the occupant, it is considered; but not otherwise. Rabh, however, is of the opinion: "Thy colleague has another colleague," etc.; and so, when protested before two, it will become known. Said Rabha: The Halakha prevails that the law of hazakah does not apply to the property of one who runs away, and also that a protest which is not in one's presence is considered. Are not the two Halakhas contradictory of each other? This presents no difficulty. If one runs away because of money matters, he is not afraid to protest, as he does not care whether his residence is made known; but if one runs away on account of a crime, then he cannot protest, as this would make known his hiding-place.

How should one protest? Said R. Zebid: If the protest was, so and so is a robber; it does not suffice, but he must protest: "He is a robber who has robbed me of my estate, and as soon as it is possible I shall summon him." But how is the law if he added to this protest, "Do not notify him of my protest"? Said R. Zebid: How can this be considered, when he plainly says: Do not notify him. R. Papa, however, is of the opinion that it means: Do not notify *him*, but tell it to other people, so that he will become aware of it afterwards. How is the law if the witnesses told him: We will not notify him? According to R. Zebid, such a protest is not to be considered, and according to R. Papa, it is, because although they should not notify him, they will nevertheless tell it to other people. But how is it if the protestor said: Do not mention it to any one? According to R. Zebid, it is certainly not to be considered. But how is it when they said: We will not mention this to any one? According to R. Papa, it is not to be considered. R. Huna b. R. Jehoshua, however, maintains that, even then, it is a protest, as a thing which does not

belong to a man, he will talk about it some time, and it will become known.

Rabha said in the name of R. Na'hman: A protest not in one's presence is to be considered; and he opposed him from the statement of R. Jehudah in our Mishna, who said that a year is allowed for notifying him and a year for returning. And if a protest not in one's presence should suffice, why must he come back? And he answered: R. Jehudah's statement is only an advice for one that he had better come himself, so that he should be able to take possession of the estates and products. (Says the Gemara:) From that which Rabha objected, it must be said that he himself does not hold with him concerning a protest in the absence of the occupant; and above it was said that Rabha himself had so decided? After he had heard it from R. Na'hman, he accepted it.

R. Jose b. Hanina happened to meet the disciples of R. Johanan and questioned them as to whether R. Johanan had said before how many people a protest must be made. R. Hyya b. Abba said in the name of R. Johanan: In the presence of two. And R. Abuhu said in his name: Three are needed.

Shall we assume that the point of their differing is the saying of Rabba b. R. Huna: "Everything which is said in the presence of three persons cannot be considered slander"? Now he who holds that two persons are sufficient does not agree with Rabba, and he who holds that three are needed does so, because he holds with him? Nay, all agree with Rabba, and the point of their differing is—a protest not in one's presence: he who says that two are sufficient, because such is not to be considered (and therefore he needs two, so that they shall testify that the occupant was present at the protest).* And he who holds that three are needed does so because a protest not in one's presence is considered, and therefore three are needed in order to make the protest public. If you wish, it may be said that all agree that such a protest is to be considered, and the point of their differing is that one holds that for this purpose *witnesses* are needed, and the other one holds that it is only necessary to make it public.

Giddle b. Minjumi had to make a protest against some one,

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* This is according to Rashbam. R. Gershom, however, maintains that the two who witnessed the protest would notify the occupant, as only for this purpose were they appointed. From the text, however, it is impossible to decide which of the commentators is right, as there are only a few words. The one who holds that "two" suffice is of the opinion that "a protest in absence" is not considered.

and happened to meet R. Huna, Hyya b. Rabh, and R. Hilkiah b. Tubi, who were sitting together, and he made his protest before them. The next year he came again to protest. Said Hyya b. Rabh to him: The protest from last year is sufficient. Said Resh Lakish in the name of B. Kapara: It is, however, necessary for one to repeat his protest after the lapse of every three years. R. Johanan, however, doubted concerning this decision, saying: Does the law of hazakah apply to a robber? A robber! Is it, then, certain that he is a robber? (Does he not claim that he had a deed, that it was lost?) He means to say that, as after the first protest he has done nothing to find the deed or to bring any other evidence, he is so considered, and the law of hazakah should not apply to him. Said Rabha: The Halakha prevails that one has to repeat his protest after each three years.

Bar Kapara taught: If one has protested once, twice, and three times, if the second and third times he has claimed the same that he claimed the first time, the occupant has no hazakah; but if he comes with other claims, the hazakah prevails with the occupant.

Rabha said in the name of R. Na'hman: When a protest is made before two persons, there is no necessity to ask that it be written down. The same is the case with an announcement. (There is a law that if one is compelled to sell his property, or to do any other thing against his will, he may announce it before two persons, and afterwards he can sue the buyer.) For an admission, however (that he owes something to one), he must ask the two witnesses to write it down. The ceremony of a *sudarium* must be done before two persons without writing. The approval of an oath, however, must be done by three persons. Said Rabha: I could not understand why the *sudarium* should be made before two. If it is considered an act of Beth Din, then three are needed; and if it is not considered such, why should it not be written down? After deliberating, however, he said: This act is not considered as an act of Beth Din, and writing down is not needed, because this act is as good as if it were written. (This is the final conclusion of the act, and cannot be denied.)

Rabha and R. Joseph both said: We do not write down an announcement unless in a case where the defendant does not listen to the court. Both Abayi and Rabha, however, said that even for such people as we are, it may be written down. The Nahardeans said: An announcement in which it is not written:

"We witnesses testify that it was known to us that this man was compelled," etc., is not to be considered. What kind of an announcement do they mean? If concerning a divorce or a gift, it is sufficient when it is made public only. And if for a sale, did not Rabha say elsewhere: We do not write announcements about things sold? It means of a sale, and Rabha admits that when one was compelled to sell against his will, as, for instance, in the case of certain vineyards (Middle Gate, p. 176), we do write such announcements.

R. Jehudah said: A hidden deed of gift is not sufficient for collection. What does this mean? Said R. Joseph: If one said to the witnesses, "Go to a place which is invisible, and write him a deed of gift." According to others, R. Joseph said: If the giver did not say to the witness, "Go to the market, and in the presence of the people you shall write him this deed." And the difference between these two sayings is when he said to them: "Go and write," without any addition. Said Rabha: Such a deed is sufficient to be an announcement in case one has to render the same to another.

Said R. Papa: This statement attributed to Rabha was not plainly said by him, but it was inferred from his decision of the following act. There was a man who wanted to marry a certain woman, and she said to him: "If you will transfer all your property to me, I will be yours, and not otherwise." And he did so. Then came his older son, and said to him: "What then becomes of me?" And the father told two witnesses they should hide themselves in a certain place and write a deed that the property belonged to his son. And when the case came before Rabha, he decided that none of them had acquired title to the property (the son, because it was written in a hidden place; and the woman, because the first deed was an announcement against the latter deed). This, however, was only a supposition by those who heard this decision. In reality, however, Rabha did so because any one could see that the deed to the woman was written only under compulsion. But in the above case of a hidden deed, it could not serve as an announcement, because the latter was made in public. And it is to be assumed that he did so because such was his will, and the former was done unwillingly; and therefore he told the witnesses to write it in a secret place.

The schoolmen propounded a question: How is it when he told them to write a deed of gift without any explanation? (The question is concerning the two sayings of R. Joseph mentioned

above.) According to Rabhina, it is considered proper; and according to R. Ashi, it is not proper (unless he told them to make this publicly). And so the Halakha prevails.

MISHNA *III.*: A hazakah to which there is no claim is not to be considered. How so? "What are you doing on my property?" And if he answered: "Because there was no claim against it," it is not to be considered. But if he says: Because you have sold it; or, You had presented it to me; or, Because your father did so, this is to be considered. A property, however, which one possesses by inheritance does not need any explanation (which means that the claim, "I have inherited," is sufficient).

GEMARA: Is not the first statement in the Mishna self-evident? Lest one say: As the man has occupied the estate, it must be supposed that he has bought it, but has lost the deed; and the reason why he does not claim "bought," is because he feared that the plaintiff would ask to see the deed, therefore it is for the court to ask him: "Perhaps you had a deed, which was lost?" as it is written [Prov. xxxi. 8]: "Open thy mouth for the dumb," etc.; it comes to teach us that it is not so.

It happened that an overflow took away the fence of R. Anan's field, and he built a new one in the space belonging to his neighbor. And his neighbor complained before R. Na'hman, who decided that he must remove it. Said R. Anan to him: But I have made a hazakah on it. And he answered: You desire that I shall decide in accordance with R. Jehudah and R. Ishmael, who said that if it was done in the presence of the plaintiff, it is immediately considered a hazakah. The Halakha does not prevail according to them. Said R. Anan: But this man has relinquished his right to me, as he himself assisted me in making the fence. And he answered: Such a relinquishment was only an error, and cannot be considered; as you yourself, if you were aware that you were building the fence on a space which did not belong to you, would not do it. And so was it with your neighbor: he, also, was not aware that the space belonged to him.

The same happened to R. Kahana, and his neighbor came to complain before R. Jehudah, bringing two witnesses. One testified that R. Kahana had occupied two rows of his neighbor's estate, and the other testified three. And R. Jehudah decided he should pay him for two of the three rows. Said R. Kahana to him: Is not your decision in accordance with R. Simeon b. Elazar, who said elsewhere that the school of Hillel agrees that

the smaller amount is included in the larger one (*i.e.*, as there is no contradiction to the two rows, it is considered as two witnesses for two rows which must be paid for)? But I can bring you a letter from Palestine that the Halakha does not prevail with R. Simeon b. Elazar. And he answered: If you will bring me this letter, we shall see.

It happened in the city of Kashta that one had lived in an attic four years, and then the owner of the house came to ask him what he was doing in the house. To which he answered: I bought it from so and so, who bought it from you. And the case came before R. Hyya, who said to the defendant: If you will bring witnesses that the man from whom you bought it lived in this attic even one day, I will leave the attic in your possession, but not otherwise. Said Rabh: I used to sit then before my uncle, and I said to him: Can it not happen that one should sell out his property in the night-time, and leave it immediately? And I understood from my uncle's appearance that if the defendant should claim: "I was present when my seller bought it from you," he would trust him, because, if he wished to tell a lie, he could claim: I bought it from you directly. Said Rabha: It seems to me that R. Hyya was correct in his decision, as our Mishna states that if the defendant claimed inheritance, no other explanation is needed, which means an explanation is not needed, but nevertheless evidence that he inherited it is needed. (Said the Gemara:) This support does not hold good, as it may be said that the expression, "no explanation is needed," means also no evidence. Furthermore, the claim "bought" should have more chance than an heir; for if it were not known to him that the seller had a right to sell it, he would not throw away his money.

The schoolmen propounded a question: If the seller was seen on this property, not as a tenant, but as the owner, to measure it, would this be sufficient, according to R. Hyya? Said Abayi: "Aye." Rabha, however, maintains that it may happen that one shall measure his property without any intention of selling. If there were three buyers to one estate (*i.e.*, A sold it to B, who occupied it a year, and thereafter sold it to C, who also after a year's occupancy sold it to D, with a bill of sale: then came A and claimed that the estate was his—he never sold it—and B does not possess any bill of sale, shall we say that, as between B, C, and D three years of hazakah have elapsed, and as A has not protested, D is entitled to it? or, as each of them has not occu-

pied it the years of hazakah, A's claim is to be considered), the years of occupancy count. Said Rabh: This is only when both C and D possessed their deeds, but not otherwise.

Shall we assume that Rabh holds that only a deed is considered to be known by the people, but not witnesses; and the reason why he said elsewhere that he who sells his field in the presence of witnesses, and thereafter it was taken away from the buyer, the buyer has a right to collect his money from encumbered estates, is because the people who bought their estates afterwards from the seller had to investigate whether he had not sold his estates previously with security, but not because witnesses are considered known to the people? But how could Rabh say so? Is there not a Mishna farther on which states that if by witnesses only, he may collect from unencumbered estates only? And lest one say Rabh is a Tana who has a right to differ with a Mishna, did not Rabh and Samuel both declare that a loan which was made orally is not collectible either from heirs or from buyers? You contradict a case of a loan with a case of selling. They are entirely different, as he who makes a loan does it privately, as he would not like people should know he needed money, and the value of his estate would decrease. But he who sells an estate does it publicly, as he is searching for a buyer who will give him a better price.

The rabbis taught: If the father has consumed one year and his son two, or *vice versa*, or each of them one year, and the buyer from them one year, it is considered a hazakah. Shall we assume that it is a hazakah because a sale is considered known to the people, and therefore the owner ought to protest? Does not the following contradict: If one has occupied or consumed in the face of the father one year, and in the face of his son two, or *vice versa*, or in the face of each one year, and in the face of the buyer who bought it from the son one year, it is considered a hazakah for the occupant? Now, if you would bear in mind that selling and buying are considered known to the people, why is the selling itself not considered the greatest protest? Said R. Papa: This may not contradict, as the cited Boraitha may treat of one who sold the field among his other fields. (And so the sale of this particular field was probably not known to the people, and therefore it cannot be considered a protest.)

MISHNA *IV.*: The law of hazakah does not apply to the following: specialists, farmers, partners, gardeners, and guardians. There is also no hazakah to a husband on the estate of his wife,

and *vice versa;* and no hazakah to a father on the estate of his son, and *vice versa.* All this is said concerning hazakah, but concerning a gift or an inheritance of brothers, or one who takes possession of the estate of an heirless proselyte, if he has done any work whatever (*e.g.*, if he has locked it, or made any partition, or torn down the old one), it is considered a hazakah.

GEMARA: Both the father of Samuel and Levi taught: There is no hazakah to a partner, and so much the less to a specialist. Samuel, however, taught: There is no hazakah to a specialist, but to a partner there is. And Samuel is in accordance with his theory elsewhere, that concerning partners the law of hazakah applies. They also may be witnesses for each other, and they are also considered bailees for hire to each other. R. Abba raised the following contradiction to R. Jehudah: "At the cave of R. Zakkai." How can you say that Samuel holds that hazakah applies to partners? Did not he say that when one works on his partner's estate, it is to be considered as if he had done this with the permission of his partner. Is this not to be understood to mean that a partner has no right of hazakah? This presents no difficulty. One of Samuel's decisions speaks of when the partner has consumed the products of the whole estate which belongs to both, and the other decision treats of when he took possession of a half share, claiming that they had divided their estates long before and that he had made a hazakah on the part he now holds. To which his partner objects, saying: Our stipulation was such that you should keep it three years, and then I should keep it three years.

In explaining this, two parties differ. One maintains that Samuel's decision that a partner has a right of hazakah is in case he has consumed all the products of the estate belonging to both. For a partner usually consumes the products of half of the estate, taking them from one half one year and from the other half the following, in order to equalize matters. And as we see that one has taken possession of the entire estate for three years in succession, it is to be supposed that he bought the same. And the other decision of Samuel speaks of when they do as is customary, consuming the products of the same half three years in succession: no hazakah applies, because his partner may claim that such was the stipulation, as stated above.

And the other maintains to the contrary. If he consumes the whole, there is no hazakah, because it may be that that was their arrangement; namely, that one should use the products the

first three years and his partner the three years succeeding. But if one utilizes exactly half for three years in succession, it may be said that he bought it, and therefore hazakah applies. Rabhina, however, says that both of Samuel's decisions may apply to the case that one has consumed the whole estate; but the decision that he has a hazakah speaks of a field which contains the prescribed quantity for division. Consequently, if one consumes the whole field (without any protest from his partner), it is to be supposed that he bought it. And the decision that there is no hazakah speaks of a field which has not the prescribed quantity. And it is to be supposed that their arrangement was that each should use it for three years, as said above.

The text says: "Samuel holds that when one works on his partner's estate," etc. What did Samuel mean to teach, that in partnership the law of hazakah does not apply? Let him then say so plainly. Said R. Na'hman in the name of Rabba b. Abuhu: He means to say that when one takes his partner's field, which is fit for sowing only, and plants trees in it, he is not liable for damages, as it is considered to be done with his partner's permission, and, moreover, his partner can claim half of any profits which may accrue after the expense of planting has been deducted. Farther on Samuel says: "They may bear witness for each other," etc. Why? Are they not interested in each other's affairs? He means to say, in case one of them gave a deed to the other, saying he had nothing further to do with the field. But even then, what is it? Have we not learned in the following Boraitha: If one says to his partner: "I have no claim on this field," "I have nothing to do with it," or, "I keep my hands off it," he says nothing (*i.e.*, unless he distinctly says, "It is yours, and I shall have nothing further to do with it," it is not to be considered, because it may be that he said it in a manner indicating that he wished he would have nothing to do with it, etc.)? It means that this was done with the ceremony of a *sudarium* (and then certainly he has nothing to do with it). But, after all, he is still interested in this case, for if the plaintiff should win the case, and the estate were taken away from the defendant, it might be appraised insufficient to cover the debt made while he was still a partner, and then it would devolve upon him. And he may also be interested in seeing that this estate shall remain with his partner, as it may happen afterwards that some one should claim that his partner had borrowed some money while they were still partners, and when his partner should have no estate, the

debt be turned over to him? This means that when he transferred his property to him he at the same time in writing took upon himself the responsibility. The responsibility of what? If the responsibility of this estate, in case it were taken away by some one, should devolve on him, then he is certainly interested in this case; and if it means he takes the responsibility of claims which may be upon the estate for his own debts, then he has nothing to do with any other claims: he is disinterested in so far as he has nothing to do with the estate itself—only the making good of his own debts. But has he a right to cut himself off from all other liabilities? Have we not learned in a Boraitha that if Holy Scrolls were stolen from a city the thieves must not be tried by the judges of that city, and also no witnesses from that city should be brought as evidence?

Now, if one should have a right to say: "I have cut myself off from this estate entirely," it would be possible, in the above case, for two judges to say, "We have relinquished our shares in the Holy Scrolls," and witnesses the same way, and then the judges could decide the case and the evidence of the witnesses be used. With Holy Scrolls it is different, as they are made for reading, and one cannot help hearing them. Come and hear! If one say: Give a manna to the poor of that city—if there is a trial about this, the case must not come before the judges of that city, and no evidence of witnesses of the same city should be admitted. Now, how can you maintain, because the poor of the city take the charity, that the judges of the city should not be eligible to decide the case? You must say, then, that the judges must not be of the poor who take charity, nor witnesses who have benefit therefrom. And why let the judges or the witnesses relinquish their share in this charity and be used? The Boraitha speaks also when the manna in question was given for Holy Scrolls, and the expression "poor" is because concerning the Holy Scrolls all are considered poor; and if you wish, it may be said, the expression "poor" is to be taken literally, and it speaks of the poor whom the judges or witnesses are obliged to assist. And therefore the trial could not come before them, because they are interested in it (*i.e.*, if the poor should win the case, their share of assistance would be less than before). And even if the judges or witnesses were taxed to assist the poor of that city with a certain sum per annum, they are still considered interested in that case, for they are pleased at the poor receiving more support.

Samuel says further: "They are also considered bailees for

hire," etc. Why so? Is this not a guard in the presence of its owner, and it is said above that in such a case he is not responsible? Said R. Papa: He means to say, if one said to his partner: Guard for me to-day and I will guard for you to-morrow.

The rabbis taught: If one sells another a house or a field, he is not allowed to be a witness, because he is always responsible for it, if there should be a claim against it. But if he has sold him a cow or a garment, he may be a witness, because he has nothing more to do with them. What is the difference between the former and the latter facts? Is the seller not responsible in case it should be found that the cow or garment in question was stolen by him? Said R. Shesheth: The first part speaks of the following case: If A has robbed B of a field and has sold it to C, then D comes with a claim, B then has no right to be a witness for C, because he is interested in having it returned to A, so that he can establish his claim. But if B should be a witness that C is right, how can he claim afterwards that the field is his? He can only testify that D's claim is wrong. But could not B exercise his right, even if it were D's? He may think that C, who is not so mighty, might settle with him, while with D it would not be so easy. And if you wish, it may be said that it speaks of a case as follows: B has witnesses that this property belongs to him, and D has witnesses who contradict B's witnesses. And in such a case, usually the judges decide that the property shall remain with its present owner. And therefore B is interested in it, and must not be trusted as a witness. But why was it necessary for R. Shesheth to illustrate this Boraitha in case the robber had sold the field to another? Could he not illustrate this by saying that C had announced his claim while the field was still in the hands of the robber A—then B cannot be a witness? Because it has to teach in the last part that if he has sold movable property to some one, which means the one who robbed the property in question and sold it, the one who has been robbed may be a witness, and this can only hold good in case of movable property which was passing into another's hands and of the renouncing of the hope to regain it by the owner. As the law dictates that these two things give title to the possessor, consequently the robbed one, who has nothing more to do with these articles, may be a witness. But if the article were still in the hand of the robber, the robbed one would not renounce his hope of regaining it, and it would still be considered his property, and consequently he cannot be a witness. Therefore he illustrated the first part

also in the same manner. But, after all, although the robbed one renounced his hope of regaining the article, did he do the same about the value of it? He speaks when the robber no longer exists—when he has no further hope even for the value, as we have learned in a Mishna that if one robbed movable property and bequeathed it to his children, they are free from paying for it. But why does not R. Shesheth explain this Boraitha as speaking of an heir (it means if the robber dies and leaves it for his heirs)? This objection would not hold good, in accordance with him who holds that the control of an heir is not equal to the control of a buyer. But to him who holds that they are equal, what can be said? Furthermore, there was a difficulty to Abayi: Why does the Boraitha use the expressions "responsible" and "not responsible"—as, according to R. Shesheth's explanation, it ought to be said, because this is "returning" and "not returning"? Therefore the Boraitha must be explained in accordance with Rabbin b. Samuel, who said in the name of Mar Samuel as follows: If one sold a field to his neighbor without security, he has no right to qualify as a witness concerning it, because in case of a creditor he can show this as a source of collection. But this can only be in case of a house or other real estate, and not of movable property; and not only when it was sold without any stipulation that collection is not to be made on movable property for the claim of a creditor, but even in case it was written, "You shall collect your money from the garment which is on my shoulders," he can do it only when the movable property is still in his possession, but not otherwise. As even then the property in question has been made a hypothec, he can only collect when it is yet under the borrower's control; but when it is not under his control, he cannot. As Rabha said (First Gate, p. 19): If one has made his slave a hypothec, and thereafter he sold it, a collection can be made; but if the hypothec was an ox or an ass, and he has sold it, the creditor cannot collect. Why so? Because real estate, when it is sold, people talk about it, which is not the case with movable property. But let it be feared that the owner of the movable property has mortgaged it together with the real estate. As Rabba said elsewhere: Such an agreement holds good to collect also from the personal property. And R. Hisda added to it that this law holds good only when the borrower mentioned in his agreement that this should not be considered an *asmachtah*, or a copied agreement? It speaks of a case in which the movable property was bought and sold immediately.

Let it still, however, be feared that he wrote in the mortgage of the real estate: "All the personal property which I possess and which I shall possess hereafter." Shall we assume that because such is not feared, a similar agreement is not to be considered? And if in spite of such agreement he has sold out or bequeathed his movable property, the sale is valid? Nay; it may be said that the above case treats of when there are witnesses who testify that this man never possessed any real estate. But did not R. Papa say that although the rabbis had enacted that if one sold out real estate without security, and a creditor took it away from the buyer, the latter could not claim the money from the seller? If, however, the investigation shows that the seller has never possessed this estate, he must pay?

It speaks that the buyer was aware that the ass in question was born from his cattle. R. Zebid, however, maintained that if sold without security, even if it was found afterwards that he never possessed it, the buyer could claim his money, because the seller might claim that on this account it was sold without security.

It is said above, in the name of Samuel, that he who has sold a field without security cannot be a witness concerning this estate, as he is interested in it; in case his creditor came, he can show him this field for collection. Let us see how the case was. Does the seller possess other real estate? Then certainly the creditor will make his claim against that estate first, as there is a rule that no collection should be made from encumbered estate when there are unencumbered estates of the defendant. And if he does not possess any others, then what can the creditor take from him, even if it remains with the buyer? It may be said that he does not possess other estates. Nevertheless, he may say: "I do not want to be wicked," that the verse in Ps. xxxvii. 21, "The wicked borrowed and repayeth not," should apply to me. But would not the same verse apply to him concerning the buyer? Nay; as he may say: I plainly told him that I would not secure this field to him. Consequently he was willing to buy it, even though it might be taken away from him afterwards.

Rabha, according to others R. Papa, announced: It shall be known to them who are ascending to Palestine or descending to Babylon, that if one Israelite sold to another an ass, and a Gentile came and took it away, claiming that it was stolen from him, it is but right that the seller shall settle with the buyer, so that he shall not suffer the whole damage. This, however, is said

when the buyer was not aware that this ass was born among his animals. But if the buyer was aware of it, he cannot expect any settlement (as such was his fate). And even in case he was not aware, he may do so when the Gentile takes away the ass only, but when he takes away the saddle and also the man, since he takes not only what belongs to him, but all that the buyer possessed, then again it is his fate.

"*Specialists*," etc. Said Rabba: "This is said when the owner has transferred to the specialist in the presence of witnesses; but otherwise, because he may claim that he never took it from him, he is to be trusted if he says that he bought it from him. Said Abayi to him: According to your theory, even if it was in the presence of witnesses, he should also be trusted, because he could claim that he has returned it already. Answered Rabba: Do you mean to say that if one deposits an article with his neighbor in the presence of witnesses the depositary should return it to him without witnesses, and that it should not be born in mind (that he used witnesses when presenting)? The latter must do the same when returning; for, if not, he will not be trusted when he claims to have returned it. Abayi objected from the following: If one has seen his slave learning a trade at a specialist's, or his garment at a cleaner's, and to the question, "What does it concern you?" he answers, "You sold it, or made it a present to me," he said nothing. But if he claims: "I was present when you told so and so to sell it, or give it for a present," he may be trusted. And to the explanation of the difference in the law between the first part and the latter, said Rabba: The latter part means to say: If the article in question came to the present possessor from a third hand, and the latter said to the plaintiff: In my presence you told so and so that he might sell it, or give it as a present. And the reason is because, if he wished to tell a lie, he could claim: I myself bought it from you. Now we see that the first part states, "If one has seen." And what does it mean? If there were witnesses, why the expression "seen"? He should bring his witnesses and take it away. We must say, then, that there were no witnesses; yet, as soon as he has seen it, he may take it away (hence this contradicts your statement that if there were no witnesses he is to be trusted, claiming, "I bought it from you"). Says Rabba: Nay; it means that there were witnesses (when he presented it to him), and even then only when he saw it in his possession. (Said Abayi:) But did you not declare that he who has deposited an article in the presence of

witnesses, the returning must also be done in the presence of the same? And he answered: I retract that statement. Rabha, however, objected to Abayi, and brought the following as a support to Rabba: If one has given his garment to a specialist, the latter claiming, "The stipulation was that you should give me two zuz," and the owner claims the stipulation was for one zuz, so long as the article is in the hand of the specialist, it is for the owner to bring evidence. If, however, the specialist has already returned it to the owner, if he announced his claim in time (*i.e.*, before sunset, at which time a laborer has to get his payment), then he takes an oath and gets the full payment. But if it was after that time, he is the plaintiff, and it is for him to bring witnesses. Now let us see how was the case. If there were witnesses, then it must be done as the witnesses testify. It must be said, therefore, that there are no witnesses, nevertheless the specialist is trusted. Is this not because he could claim, "I bought it," so that he would be trusted? So is it when he claims his payment? Nay; it treats of when there were no witnesses, and also when the owner of the article did not see it in the hands of the specialist (so that the specialist could claim that he had returned it).

R. Na'hman b. Itz'hak objected from our Mishna, which states that a specialist has no hazakah, from which it is to be inferred that only a specialist has not, but a common man has. And this is certainly the case if there were no witnesses; for if there were, why should he? Hence we see that a specialist has no hazakah even when there were witnesses. And this contradicts Rabba's above statement, and this objection remains.

The rabbis taught: If one has exchanged his utensils for another's in the house of a specialist, he may use them until the owner shall come and recognize his. If the same was done at the house of a mourner or at a house of a wedding, he must not use them before they shall be recognized. And what is the reason for the difference in the two cases? Said Rabh: I used to sit before my uncle, and he explained it to me that it might happen that the owner of an article might say to a specialist, "Sell this article for me" (hence the article might be given to him, not by an error but intentionally by the specialist, who has a right to sell it), which cannot be the case in the house of a mourner or of a wedding. Said R. Hyya b. R. Na'hman: Then it may be used only when the specialist himself has exchanged it; but if this was presented to him by his wife or children, he must not use it.

And even when it was presented by the specialist himself, the law holds good if he said to him: "Here is *this* article"; but if he said to him: "Here is *your* article," then he must not use it, as we see that the specialist has erred in giving it to him. Said Abayi to Rabha: Come and I will tell you what the swindlers of Pumbeditha are doing. If one claims: "Give me up my mantle which I have given to you for repairing," the other answers that this never occurred. And if he claims: "I have witnesses who saw it at your place," he claims it was another's. "But bring it forth and let us see it." He answers: "No, indeed! I have no right to show you the goods of others." Answered Rabha: Although he is a swindler, nevertheless he does it in accordance with the law, as the Boraitha states plainly, when he sees it with his eyes. Said R. Ashi: If the claimant is a clever man, he can make the specialist show him the article in question, saying: I understand that you keep it because you are afraid I shall deny the debt which I owe you. I admit to you in the presence of witnesses that I owe you, and will pay you when you shall bring forth this garment and it shall be appraised. Then you will take yours, and I shall take mine. Said R. Aha b. R. Ivya to R. Ashi: The swindler may answer: I do not need your appraisement, as it was appraised long ago by more competent men than you are.

"*Gardeners*," etc. Why so? Until now he took only the half, and now we see he has consumed the whole of it for three years, why has he no hazakah? Said R. Johanan: It speaks of family gardeners (*i.e.*, the same gardeners used to guard and work up the fields as gardens of that family since it was in its possession, and as this was a kind of inheritance, the owners could not discharge them by substituting others, and with such gardeners it might happen that they consumed the fruit for three years in succession and thereafter the owners consumed the fruit for the same period, and therefore no hazakah applies to them. But to ordinary gardeners, if they consume the fruit for three years, hazakah does apply. R. Na'hman said: A gardener who has hired other gardeners to substitute him for the years of hazakah (even if he was of the kind mentioned by R. Johanan), hazakah may be considered, because in such a case the owners would protest. R. Johanan said again: To a gardener of the above sort, who has divided the work which is needed for the gardens, to hired gardeners, hazakah does not apply, as it may be supposed that he does so with the permission of the owner (as he himself could not do the whole work).

R. Na'hman b. R. Hisda sent a message to R. Na'hman b. Jacob: Let the master teach us. May a gardener be taken as a witness in case of a claim, or not? R. Joseph was sitting before the latter when the message came, and said to him: "So said Samuel: A gardener may be a witness." But is there not a Boraitha which states that they must not? This presents no difficulty. If there are products still on the estate, the gardener may not qualify as a witness; but if there were none, then he may.

The rabbis taught: A surety may be a witness for the borrower in case the latter has other property besides that to which the claim refers. And the same is the case with a lender. The first buyer may be a witness to the second (*e.g.*, if A sold one field to B and another to C, and D claims that the field sold to C belongs to him as A has robbed him of it, B may be a witness in that case in behalf of C in case A has other property), so that if there should be another claim he should be able to pay from the remainder.

A receiver (*i.e.*, one who receives the money from the lender and forwards it to the borrower, as to which the law dictates that the lender has a right to collect from whomsoever he chooses—either from the receiver or from the borrower)—according to some he may, and according to others he may not be a witness. He who permits this maintains that the receiver is considered an ordinary surety whom the law permits to be a witness, and he who forbids it maintains that the receiver is always pleased when the borrower has more estates, so that in case a creditor should appear he will be able to pay him from his middle estate.

R. Johanan said again: A specialist has no hazakah, but his son has; and the same is the case with a gardener. A robber, however, neither he nor his son has hazakah, but his grandson has. Let us see how was the case? If all mentioned above claimed that the estate was their fathers', then they also should not have any hazakah; and if they claim for themselves, it means that they themselves bought it. Why should this law not apply to the son of the robber also? He speaks of a case where there are witnesses who testify that the owners have admitted to their fathers in their presence that they sold it; and then the sons of a gardener or a specialist are to be trusted if they claim to have inherited from their fathers; but the son of a robber is not to be trusted even in such a case. As R. Kahana said: It may be feared that the owner has admitted to the robber only for fear

lest he make him more trouble. Said Rabha: It may happen that even the grandson of a robber shall not have any hazakah. It is when the basis of his claim is his grandfather. Who is to be considered a robber, so that the law of hazakah should not apply? Said R. Johanan: When he has occupied a field which does not belong to him (and as he was an influential man, the owner was afraid to sue him). R. Hisda, however, maintains that it means only people like a certain family of N, who used to kill men when they opposed them in money matters.

The rabbis taught: A specialist has no hazakah so long as he keeps up his profession, but otherwise when he has ceased. And the same is the case with a gardener when he has given up his gardening. The same is the case with a son who has separated himself from his father, and with a woman who was divorced from her husband—all of them are considered, in a case of hazakah, with men in general. It is correct to teach about a son who has separated himself, lest one say that usually a father relinquishes his right to a son; but was it also necessary to teach about a divorced woman? Is not this self-evident? It means that the divorce was made by such a document as is doubtful in legality, and in such a case she is considered divorced and not divorced; and it is in accordance with R. Zera, who said in the name of Jeremiah b. Abba, quoting Samuel, that in a case where the sages say, "She is divorced and not divorced," her husband is obliged to support her.

R. Na'hman said: Huna told me that all the persons mentioned above who have not the right of hazakah, if they bring evidence, it is to be considered, and the court may leave the property in their possession; except a robber, for even if he brought evidence, it must not be considered, and the court replevins the estate. But what news comes he to teach us? Have we not learned this already elsewhere, that if one has bought estates from a *sicarius* (a man who took away the estate by threatening murder if it was not given to him), and afterwards he got a bill of sale from the owner (without giving him any money), the bill of sale is not considered and he has no title (hence it is already taught that a robber and all those who base their claims upon his actions, even if they bring evidence, are not to be considered)? This teaching was necessary to deny Rabh's theory, who said that the cited Mishna speaks only of a case in which the owner told the buyer: "Go make a hazakah on the estate and acquire title," but has not furnished him with any deed.

But if he gave him a deed, title is acquired. R. Huna comes to teach us that the Halakha prevails in accordance with Samuel, who said that in such a case, even if he gave him a deed, title is not acquired unless he take the responsibility for the future. And R. Bibi has added to the above statement of Huna in the name of R. Na'hman, that the estate does not remain in his possession, but the claim for his money, in case he paid afterwards to the robbed one, is to be considered, provided witnesses testify that he gave him the money in their presence. But if they testify that in their presence the robbed one has admitted to the robber that he was paid for it, it is not to be considered. As R. Kahana said elsewhere: Such an admission may have been made only because of fear that he would be killed. R. Huna said: If one sold his estate by duress, the sale is valid. Why so? For if one sells every estate which belongs to him, he usually does so because he is compelled to do so by circumstances, and nevertheless the sale is valid.

But perhaps there is a difference between the pressure of his private circumstances and duress, which is a pressure by others? This is to be explained as we have learned in the following Boraitha: It is written [Lev. i. 3]: "Shall he bring it," which means that he may be compelled to bring it—that it may be *Lirzuno* (literally, according to his will). And what does this mean—that he shall be *compelled* until he shall say: "I am *willing* to do so." But still it may be that there is a difference, because one likes to atone (and consequently he does it, finally, with good will). Therefore we may infer the same from the latter part of the cited Mishna: And the same is the case with divorced women—he may be compelled until he says: "I am willing to do so." But still it may be that this is to be done because it is a meritorious act to listen to the law (which is not the case with R. Huna's theory). Therefore we must say that R. Huna's decision was from a common-sense standpoint, that when a man is in such circumstances he resolves to give title to the buyer. R. Jehudah objected from the following: A divorce which was compelled by the court of Israelites is valid. By Gentiles, it is not, unless they beat him, saying: "Do as the Israelite court dictates to you." Now, if you say because of the circumstances he resolves to give title, why should the divorce be invalid, even at a court of Gentiles? It may also be supposed that because of circumstances it was resolved to give the divorce legally. The answer is: Was it not taught in addition to this that R. Mesharshiah said: Biblically

the divorce is valid, even when it was obtained in a court of Gentiles. And why did the rabbis enact that such should be invalid—that every woman who did not like her husband should not go to the Gentile court to be divorced from her husband? R. Hamnuna objected from the above-cited Mishna: If he bought of a *sicarius*, etc. Why, then, should it not be said in that case also, that because of the circumstances he resolved to give title? Of this, also, it was taught that Rabh said that this holds good only when there was no deed (as said above). But still there would be an objection to Samuel, who said above that even with a deed the same is invalid?

Samuel himself agrees that such a sale is valid in case the buyer has paid the owner in cash. But would not R. Bibi's above statement in the name of R. Na'hman contradict R. Huna? Bibi's statement is not a Boraitha and not a Mishna, but only a saying, to which R. Huna need not pay any attention. Said Rabha: The Halakha prevails that if one sells his goods under duress the sale is valid, provided he was compelled to sell one of his estates, and he himself has made the selection. But if he was compelled to sell this field, the sale is not valid, provided he did not count the money given him for it (as this shows that he does it unwillingly); but if he has counted the money the sale is valid. And all this is said in case he has no opportunity to extricate himself; but if he had, and did not take advantage of it, the sales are valid. (Says the Gemara:) In reality, the Halakha prevails that in all these cases the sale is valid, even if he was compelled to sell *this* field, as a woman is similar to *this* field; and Amemar said that if a woman is compelled to betroth herself under duress the betrothal is valid. Mar b. R. Ashi, however, said that in case of a woman the betrothal is null and void. Because he has acted unlawfully, he must also be treated unlawfully, and the rabbis deny his betrothal and consider it void.

Tabba hung Pappi on a tree called khidra, to compel him to sell him his field, and he did so. And Rabha b. b. Hana signed his name on both—on the protest of Pappi made before being compelled, and on the bill of sale made under duress. Said R. Huna: He who has signed his name to the protest, and also he who has signed his name on the bill of sale, did well. How is this to be understood? If there was a protest, the bill of sale cannot hold good, and *vice versa?* He meant to say that if there were no protest, he who signed his name on the bill of sale did well, for according to his theory a sale under duress is valid. But why

should the protest annul the bill of sale, when the same witnesses who signed the protest signed the bill of sale also? Did not R. Na'hman say: Witnesses who testify that they signed their names to a note whose amount was not yet paid, but which was prepared by the borrower in case he should find some one who would make him the loan, are not to be trusted? And the same is the case if some one has sold a bill of sale, and the witnesses whose signatures were on the same testified that the one who made the bill of sale made also a protest previously "before us, that he was compelled to make *this* bill of sale, and we have acknowledged the truth of his protest."

Why, then, said R. Huna that if not for the protest the sale would be valid? Let him say it is valid, notwithstanding this protest, in accordance with R. Na'hman's decision just stated? R. Na'hman's statement was when the protest was oral, as such cannot harm a written document. In our case, however, the protest was a written one, and therefore it annuls the bill of sale.

Mar b. R. Ashi, however, maintains that if witnesses testify, "We signed our names before the money was given" (as explained above), they are not to be trusted; but if they testify that this bill of sale was previously "protested before us and acknowledged by us," they may be trusted. Why so? Because in the first case, after the witnesses signed their names to the fact that so and so had borrowed money from so and so, they could not sign another document that the borrower had not received the money as yet, as it would contradict their first statement, and it would seem that they had made themselves liars; and, therefore, if they testify so, they are not to be trusted, as there is a rule that one cannot make himself wicked; *i.e.*, if one comes before the court, and says, "I am a liar," or "wicked," for the purpose that another shall have benefit from this confession, he is not to be trusted. But in the other case, however, both documents may be written by the very same men; *i.e.*, if they see a man in trouble, they may listen to his protest, write it down, and sign it, and thereafter also sign the bill of sale to which he was compelled. And therefore, even if the protest was not written by them, they may be trusted if they testify that they have heard the protest and acknowledged to the truth of it.

"*No hazakah to a husband*," etc. Is this not self-evident? As he has a right to use the fruit of her estate, how can it be considered a hazakah? It speaks of even when he gave her a document that he has no interest in her estate. But even then,

what is it? Have we not learned in a Boraitha above (p. 109), that if one says: "I have nothing to do with this field," "I have no claim to it," and, "I keep my hands off it," he says nothing? Said the disciples of R. Yanai: Our Mishna treats of when he gave her such a document when she was still betrothed. And this is in accordance with R. Kahana, who says of an estate which one expected to take possession of in the future, he has a right to make a stipulation that he should not inherit it. And it is also in accordance with Rabha, who said: If one declares: "I do not care to have the privilege of the enactment by the sages in a thing similar to the above," he may be listened to. What does this mean? That which R. Huna said in the name of Rabh: A woman has a right to say to her husband: "I do not wish to be supported by you and also would not wish to do any work for you."

Now the Mishna states that the consuming of fruit does not make a hazakah; but if he brings evidence that she sold her estate to him, it would be a hazakah. Why? Let her claim that she had done so only to please her husband. Have we not learned in a Mishna: If one bought an estate from another whose properties were encumbered by the marriage contract of his wife, and afterwards he also took a deed from his wife, the sale is invalid? Is it not because she may say: I did so only with the intention of pleasing my husband, but not with the intention of selling it? Was it not taught in addition to this Mishna that Rabha b. R. Huna explained it that the Mishna treats of certain three fields—namely, one, of one he had set apart in the marriage contract before marriage; and another, of one of which he had made a *hypothec* in the marriage contract after marriage; and the third, of one which she brought him as a gift from her father, which was appraised at a certain amount of money, for which the husband became responsible in the marriage contract? What does he mean to exclude? Shall we assume to exclude all other estates which were also encumbered to her? Then, certainly, it would create so much the more animosity between her husband and herself, because he would say: You did not want to sign this because you are expecting my death or to be divorced. Hence the claim that "I have done so to please my husband" would be right. And shall we say that he means to exclude the usage of fruit? Did not Amemar say that if the husband and his wife have sold the usage of fruit from her estate, it is not to be considered (because of the same claim, "I have done it only to

please my husband")? He means to exclude the use of fruit; and Amemar's statement was only in case he had sold out and died, that she might, after his death, make use of that claim, or in case of her death, he had a right to make use of such a claim, according to the enactment of the rabbis. And it is as R. Jose b. Hanina said (First Gate, p. 197). But when they are both alive and have sold out, and even when the husband only has sold out, the sale is valid. And if you wish, it can be said that Amemar's statement is based upon R. Eliezer's elsewhere, that an article which does not bear the name of its owner—as, for instance, the fruit of the wife's estate, which cannot be said to belong to her or to belong to him—cannot be sold by either of them. And Rabha said that R. Eliezer based his statement on [Ex. xxi. 21], "for he is *his* money," which means the money which belongs to him alone.

"On his wife's estate." But did not Rabh say that a married woman must protest (in case one has occupied her estate). Who is the one who has occupied her estate? Shall we assume any one? Did not Rabh say: "There is no occupancy in the estates of a married woman"? We must therefore say, he means even when her husband has occupied her estate? Said Rabha: He means the husband, and in case he has dug in her estate excavations, pits, and caves, then she must protest, as he has the right to her estate only for usage of fruit; and if she did not, he has a hazakah, as, if he had not bought it, he would not dare to dig in it. But did not R. Na'hman say in the name of Rabba b. Abuhu that there is no hazakah concerning damages (hence if the husband has damaged her estate, she has not had to protest). Was it not taught in addition to this (above, p. 69), R. Mari said: Concerning smoke, etc.? R. Joseph, however, said: Rabh means a stranger, and he speaks in case he has occupied it at a certain time while her husband was still alive and three years after his death; and because the occupant could claim, "I bought it from you" (as three years have already elapsed since her husband's decease), he is to be trusted if he claims, "You sold out your estate to your husband, and I bought it from him." The text states: Rabh says: There is no occupancy in the estate of a married woman. The judges of the Exile, however, maintain that there is. And Rabh himself, when he was told of this, said: The Halakah prevails in accordance with the judges of the Exile. (Samuel and Karna were called the judges of the Exile.) And to the question of R. Kahana and R. Assi: Has the master

receded from his statement? he answered: I meant to say, as it was illustrated above by R. Joseph.*

"And *vice versa*." Is this not self-evident? Has she not to be supported from the estate of her husband? It treats in case he has set aside another estate for her support. But how is it if she brings evidence that she has paid him for it? Has she the right? Let him claim: I intended only to discover the money which she had hidden from me, and therefore I told her I would sell it, never intending, however, actually to transfer it to her. And because it was not stated, let it be inferred from this that if a husband sold his estate to his wife, the above claim should not be taken into consideration? Nay; it may be said that the Mishna means evidence in the form of a transfer as a gift.

R. Na'hman said to R. Huna: "The master was not with us yesterday, in our college, and there were taught many good things." "And what were they?" "That when a husband sells his estate to his wife, she acquires title, and the claim, 'I did it only to discover her money,' etc., is not to be considered." And Huna answered: This is self-evident, as if you take away the fact that she has given him money, the bill of sale gives her title. For have we not learned in a Mishna that real estate may bought with money or a document, or with hazakah? Rejoined R. Na'hman: But was it not taught, in addition to it, that Samuel said that it speaks only of a bill of a gift, but a bill of sale gives no title unless he paid the money for it? Said Huna: But was this not objected to by R. Hamnuna, from the following: With a document—how so? If he wrote on a piece of paper [or on a piece of broken clay, although it has no value whatever], "My field is sold to you," or, "My field is bought from you," it is sold and transferred to the buyer? And R. Na'hman answered to this: Did not R. Hamnuna himself answer his objection that it speaks of one who sells his estate because of its barrenness? R. Ashi, however, answered (the objection of Hamnuna): The cited Boraitha speaks of a gift which was written in the manner of a bill of sale, to strengthen its power (*i.e.*, the seller has to make good all claims to it). An objection was raised from the following: If one borrowed from his bondsman, and encumbered his estate for him by a document, and afterwards he freed him, or from his wife and thereafter he divorced her, they have nothing

* R. Joseph was two generations after Rabh. But it is the custom of the Gemara to write as if Rabh would have said: "I illustrate this as R. Joseph has done it."

to claim. Must we not assume that the reason is because we suppose that he only intended to discover the money which was hidden from him? That case is different, as one would not like to make himself a slave to the lender ([Prov. xxii. 7]: "The borrower is servant to the lender").

R. Huna b. Abbin sent a message to the college relating that if one sold out his field to his wife, she acquires title, but he has still a right to use the products. However, R. Abba b. Abuhu, and all the great men of the generation, said that such a bill of sale is to be considered a deed of gift, but it was written in the manner of a bill of sale for the purpose of strengthening its power. This message was objected to by the college, from the Boraitha just cited, and was answered with the same reply.

Rabh said: If one sold his field to his wife, she acquires title, and the husband uses the products. If, however, he has presented it to her as a gift, she acquires title, and he must not use the fruit. R. Elazar, however, maintains that in both cases title is acquired, and the husband has no right to use the fruit. R. Hisda acted in accordance with R. Elazar. Said Rabban Uqba and Rabban Nehemiah, sons of Rabh's daughter, to R. Hisda: "Does the master put aside the great men and act like the small ones?" (R. Elazar was only a disciple of R. Johanan.) And he answered: I have also acted according to the theory of the great men, as when Rabbin came from Palestine, he said in the name of R. Johanan that in both cases she acquires title, and the husband has no right to use the products. Said Rabha: The Halakha prevails that if one sells his field to his wife she does not acquire title, and the husband may use the fruit; and if a gift, she acquires title, and he may not use the products. Does not Rabha contradict himself? (He says she does not acquire title, and it is self-evident that he may use the fruit; and when he says he may use the fruit, it means although she has acquired title.) This presents no difficulty. If she bought with the money which was hidden from her husband, she does not acquire title at all; but if with money which was not hidden from him, she acquires title; but he may, nevertheless, use the fruit. So was it said in the name of R. Jehudah.

The rabbis taught: One must not accept bailments from women, from slaves, or from children: If, however, one has accepted from a woman, he must return it to her; and in case she dies, he must return it to her husband. From a slave, he must return to him; and in case he dies, then to his master. If from

a minor, he should invest it in such a thing as will bear good fruit until he shall be of age, and in case of death return it to his heirs. All of them, however, if they said, while dying, "This belongs to so and so," he must act accordingly (even when the depositor was a minor); and if they have declared nothing, he may do in accordance with his conscience—(*i.e.*, he shall return it to him whom he thinks to be the proper heir. The wife of Rabba b. b. Hana while dying said: These earrings belong to Martha, and to the sons of his daughter. And Rabba came to question Rabh what he should do. And he answered: If these people whom she mentioned are worthy, so that they can afford to keep bailments with her, then do as she declared; and if not, then you may explain her declaration as you please. "From a minor, he should invest," etc. R. Hisda maintains in Holy Scrolls; and Rabha b. Huna said: A tree which bears dates.

"*A father on the estate of his son*," etc. Said R. Joseph: Even if they have separated themselves. Rabha, however, maintains that in case of separation the law is different. Said R. Jeremiah of Diphti: R. Pappi has acted in accordance with Rabha's statement. Said R. Na'hman b. Itz'hak: I was told by R. Hyya of Hurmiz Ardshir that he was told by R. Aha b. Jacob, quoting R. Na'hman b. Jacob, that when they have separated themselves each of them has a right of hazakah. And so the Halakha prevails.

It was taught: If one of brothers who was the business man of the house, and the bills of sale and notes were in his name, claims: "All this is my own, inherited from my mother's father," according to Rabh, the burden of proof lies upon him; and according to Samuel, it lies upon his brothers. Said Samuel: Abba admits that in case he dies the burden of proof is thrown upon his brothers. R. Papa opposed: Should we make for orphans such a claim as their father while alive had not any right to (*i.e.*, when this brother was alive, it was for him to bring evidence, and if he could not, the goods belong to all the brothers, and because he is dead, shall we say that the brothers have to bring evidence, and if they cannot it belongs to his orphans)? Did not Rabha levy upon a pair of shoes and a book of Hagadah from orphans without any evidence that they were things which are usually hired and borrowed? And he did so in accordance with the message of R. Huna b. Abbin, that of things which are usually borrowed and hired one is not trusted to say, "They were bought by me." This difficulty remains.

Said R. Hisda: The decision of Rabh concerning the brother who manages the business of the house, holds good only when all the brothers are not separated in the household—even in the dough of bread which they take for the house. But if they are, he may claim that he has spared from his householding the amount which he has in his hand, and the brothers have nothing to do with it. The evidence mentioned in Rabh's decision—what should it be? According to Rabba, the evidence should be with witnesses that he has saved the money or it came from other sources; and according to R. Shesheth, it is sufficient when the court has approved the bill of sale or other notes which bear his name (as it is to be supposed that the court would not approve if it were not sure it belonged to him only). Said Rabha to R. Na'hman: There are Rabh and Samuel, with Rabba and R. Shesheth, who discuss this matter, and I would like to know the opinion of you, master—with whom you agree. And he answered: I am aware of the following Boraitha: One of brothers who was the business man of the house, and there were bills of sale and other notes bearing his name only, and he claims: "They are my own, inherited from my mother's father," the burden of evidence rests with him. And the same is the case with a woman who was managing the business in a house and there were documents bearing her name only, and she claims that they are her own property which came from her grandfather on the father's or mother's side—it is upon her to bring evidence. (Says the Gamara:) It was necessary for the Boraitha to declare the same law in the case of a woman, lest one say that because it is an honor for a woman to be trusted with the management of a house, she would surely take care not to rob the orphans, and therefore she ought to be trusted without evidence, it comes to teach that it is not so.

"*Concerning a gift or an inheritance of brothers*," etc. How is this to be understood? Does not the law of hazakah apply to the persons mentioned farther on in the Mishna? The Mishna is not complete, and should read thus: All this is said of a hazakah to which there is a claim; as, for instance, the seller says, "I did not sell," and the buyer says, "I have bought." But a hazakah to which there is no claim, as, for instance, who presents a gift or an inheritance of brothers, or who takes possession of the property of a proselyte, to which the law prescribes that he needs to acquire title by doing something—if he has locked it or made any partition, etc.—it is a hazakah. R. Houshia taught: In a

Tosephta of Tract Kidushin, written by the school of Levi, "If he locked it," etc., in the face of the other party—it is a hazakah. Is this to be understood, only to his face, but not in his absence? Said Rabha: He meant to say: If this was in the face of the other party, it is not necessary for the latter to tell him: "Go make a hazakah, and acquire title." But if not to his face, it is not considered a hazakah unless he distinctly said to him the words just mentioned. Questioned Rabh: How is the law concerning a gift, according to the Boraitha just mentioned (must the giver also tell the receiver, "Go and make a hazakah," or not)? Said Samuel: Why was Abba doubtful? When, concerning a sale for which the seller gets money, it is not a hazakah unless he tells him, "Go and make a hazakah," so much the less it must be so with a gift, for which he has received nothing. Rabh, however, maintains that he who makes a gift usually makes it with a good eye, and no explanation is needed.

The Mishna states: "Any work whatever." What does this mean? As Samuel said: If he has completed the partition which was there already to the size of ten spans, or he has broken a hole in the partition through which he can go in or out, it is considered a hazakah. Let us see how was the partition! If it was placed in such a position that one could not climb over it to the estate, and after its completion by the occupant it is also the same, what, then, has he done that shall be considered a hazakah? And if in its previous condition one could climb over it, and after its completion one cannot, then he has done much that does not correspond with the expression "whatever"? It means that in the previous condition one could easily climb over it, and after it was completed it is not so easy for one to do so; and the same is the case with a hole in a partition, by which, in the previous condition, it was not easy to enter, and one broke it to such an extent that it is easy to enter. R. Assi in the name of R. Johanan said: If the occupant of the property of a proselyte put a little piece of wood too near the hole which was in the partition and with this he has improved it, or he took out a piece of wood and with this he has improved it, it is considered a hazakah. What does he mean by the expression, "he put . . . or he took out"? Shall we assume that with this piece of wood he closed the hole so that it prevents the water from going in, or he took out a piece of wood, and with this he has made place for the water gathered in to come out? Why should it be considered a hazakah? Is it not the duty of every Israelite to save the prop-

erty of his neighbor from damage when seeing danger is near? Therefore it must be supposed that he means he has put in a piece of wood with the purpose that the water which is useful to the estate shall remain, or he took out a piece of wood so that he opened a channel permitting water to reach the estate. The same said again in the name of the same authority: If there were two estates left by a proselyte and there was a boundary between them, and one has made a hazakah in one of them with the purpose of acquiring title to it, it is acquired. If for the purpose of acquiring title to both, title is acquired only to that on which he has made a hazakah, but not to that which was on the other side of the boundary; and if for the purpose of acquiring title to the latter, even to that in which he has made a hazakah, title is not acquired.

R. Zera questioned: If one has made a hazakah for the purpose of acquiring title to it, to the boundary, and to the estate which is beyond it, how is the law? Shall we assume that because all are connected title is acquired, or because the boundary intervenes between them it is considered as if they were separated and title is not acquired? This question remains undecided. R. Elazar questioned: How is it if this man has made a hazakah on the boundary itself with the purpose of acquiring title to both? Should the boundary be considered a breadth of the earth which joins the two fields, and therefore title is acquired, or the fields are nevertheless considered separated and title is not acquired? This question also remains undecided.

R. Na'hman said in the name of Rabba b. Abuhu: If there were two houses, one inside of the other, and one has made a hazakah on the outer one for the purpose of acquiring title to it, title is acquired. If for the purpose of acquiring title on the inner one also, the outer one is acquired, but not the inner. For the purpose of acquiring the inner one only, even the outer one is not acquired. The same is said again in the name of the same authority: If one has built a palace on the property belonging to the proselyte in question, and another comes and puts doors to the palace, the latter has acquired title to the whole of it. Why so? Because the work of the first is considered as if he had only turned bricks without using them, as the doors to it are the main thing.

R. Dimi b. Joseph in the name of R. Elazar said: If on the estate of the proselyte in question there was a palace and one has coated one of the walls with lime, or painted one of the pictures

therein, title is acquired. How much of the wall must he coat or how large must he paint the picture? Said R. Joseph: One ell. And R. Hisda added that this ell must be opposite the door (but at another place he must coat or paint more than this).

R. Amram said: The following was told to us by R. Shesheth, who to enlighten our eyes explained a Boraitha. He said: If one has prepared his bed in the estate of the proselyte in question and slept there, he acquires title to the whole estate. And he enlightened our eyes to the Boraitha as follows: How can one acquire title to a bondsman with hazakah? If the slave has put on the shoes of the master or taken off his shoes, or has carried his garments after him to the bath-house and undressed him and washed him, anointed, rubbed, dressed him, put on his shoes, or even lifted him up, title is acquired.

Said R. Simeon: There cannot be a better hazakah than lifting up, as this act gives title to one in everything. How is this to be understood? The Boraitha says that if the slave has lifted up his master it gives title to the master; but if *vice versa*, it does not. And to this answered R. Simeon: There is no better hazakah than lifting up, which means that this gives title even if the slave was lifted up by the master. R. Jeremiah of Bira in the name of R. Jehudah said: If the estate of the proselyte in question was already ploughed and one put radishes in the furrows, it is not considered a hazakah, because at the time he put the radishes in, without covering, there was no improvement at all; and even if in a few days afterwards these begin to grow, it is not considered as if done by him, but from itself.

Samuel said: If one peels off the bark of a tree, if he has done it for the improvement of the tree, title is acquired; and if for food for his cattle, it is not. [And how can we know this? If he peels off the tree from both sides, it is supposed that he does it for the improvement of the tree; but if from one side, it is for his cattle.] He said again: If one cleans off the estate in question, if he has done this for the improvement of the earth, title is given; but if he has done so with the idea of using it for fuel, it does not. [And how shall this be proved? If he takes off all there is, it is supposed that he does it for the improvement; but if he chooses the larger pieces and leaves the smaller ones, it is to be assumed that he does it for the purpose of using it for fuel.]

And the same said again: If one engaged himself to level ground for the sake of the earth itself, it gives him title; and if

with the intention of placing a temporary barn there, it does not. [And how shall this be proved? If, for instance, he takes off the superfluous earth from the hills and puts it in the hollows (and so he has done with all of them), it is to be supposed that he does it for the improvement of the ground; but if he only made the hills lower, and only at the edges of the hollows he filled these in, then it is to be supposed that he does so with the intention of putting up a temporary barn.] He also said: If he opens a stream of water to this ground, if he does so for the improvement of the earth, title is given to him; but if with the idea of catching fish, it does not. [And how shall this be proved? If he opens both sides of the estate, one for the purpose of letting the water enter and the other side for letting it out, it is supposed that he does so with the intention of catching fish; and if he open only one side, so that the water may enter, it is assumed that he does so for the improvement of the earth.] There was a woman who peeled off on one side trees of the estate of the proselyte in question for thirteen years. Another man came who dug a little under the tree; and the case came before Levi, according to others before Mar Uqba, and he left it in the possession of the latter. And this woman came and protested, and he said to her: What can I do for you, in that you have not made the hazakah as it ought to be?

There was a woman who had made a partition to that which was already there in the estate of a proselyte. Another man, however, came and digged in the estate; and when the case came before R. Na'hman, he left the estate with the latter. And this woman came and caused a disturbance, and R. Na'hman answered: What can I do for you, as you have not made a hazakah as people ought to do?*

Rabh said: If one paints in the estate in question a likeness of an animal or a bird, title is acquired. So Rabh himself made such a hazakah at a garden which was near his college, left by a proselyte who died without children.

It was taught: A field which was marked out by boundaries on four sides, said R. Huna in the name of Rabh: As soon as one has dug one spadeful of earth he acquires title to the whole field. Samuel, however, maintains that he acquires only the place he has dug. And what is the law concerning a field not marked off by boundaries? Said R. Papa: If he digs in it as much as a team of oxen in one furrow and the return.

* This paragraph is transferred from Erubhin, 25*a*, as this is the proper place.

R. Jehudah said in the name of Samuel : The estate of idolaters, if sold to an Israelite and the latter has not made a hazakah on it, it is like a desert ; and the first who makes a hazakah on it acquires title. Why so? Because the idolater, as soon as he gets the money, cuts himself off from it ; and as the Israelite has not as yet acquired title to it until he gets the bill of sale, it is therefore like a desert, and every one may try to take possession of it (returning the money to the buyer). (The commentator Rasbham, however, maintains that from the expression, " It is like a desert," it is to be understood that the occupant has to pay nothing, and the buyer has to sue the seller if he can do so.) Said Abayi to R. Joseph : Is it possible that Samuel should say so? Did he not declare elsewhere that the law of the government must be respected as the law of the Torah, and the government dictates that title is acquired only by a deed, and not otherwise? Hence the other one who has made a hazakah is also without the deed needed. And he answered : I know it only from experience. As it happened in the village Dura of the shepherds, an Israelite bought an estate of idolaters, and the Israelite came and dug a little on this estate, and when the case came before R. Jehudah, he left it in the hand of the latter. And Abayi rejoined : Do you want to compare any other cases to the case of the village Dura? There was a *pagus* with estates hidden from the government, and the possessors of those estates did not pay taxes for it. And the government dictates that he who pays the taxes owns the land.

R. Huna bought an estate from an idolater and another Israelite digged in it ; and the case came before R. Na'hman, and he left it in the hands of the latter. Said Huna to him : The basis of your decision is what Samuel said, that the estates which are sold by an idolater are like a desert, and who takes possession thereof acquires title. Why should the master not decide in accordance with the other saying of Samuel, that the digger acquires title only at the place where he dug? And he answered : In this respect I hold in accordance with Rabh, in whose name R. Huna said : As soon as one has digged one spadeful he acquires title to the whole of it.

R. Huna b. Abbin sent a message : If an Israelite buys a field from a Gentile, and another Israelite comes and takes possession of it (before the bill of sale reaches the buyer), the court has no right to take it away from the latter. And to this, R. Abbin, R. Elaa, and all our masters at that time agree.

Rabba said : I was told by the Exilarch Uqban b. Nehemiah, in the name of Samuel, the following three things : (*a*) That the law of the government should be respected as the law of the Torah. (*b*) The hazakah of the Persians is no less than forty years. (*c*) And the rich farmers who buy land from the officers of the government for the taxes which were not paid by the previous owners, the sales are valid. But this is only when the owners owe to the government taxes. But if the land was taken for poll taxes, the sale is not valid. Why so ? Because the poll taxes rest upon their heads, not upon their land. R. Huna b. Jehoshua, however, maintains that even the barley in the pitcher is mortgaged to the poll taxes (*i.e.*, when the land was taken away for poll taxes, they have a right to sell it). Said R. Ashi : Huna b. Nathan told me that Amemar objected to the decision of R. Huna, saying : According to this theory, the rule prescribed by the Scripture, that a first-born shall take two parts in the inheritance, should be abolished, as if the whole estate is encumbered to the government for poll taxes, the bequeathed estate will be fit only in the future for inheritance, but not as yet. And there is a rule that the first-born has a right to take a share only in that which is already fit. And he answered : Why this objection to poll taxes ? The same can be raised concerning land taxes also. But to this it can be answered that he speaks of when one dies after he paid the land taxes, and the same can be said with poll.

R. Ashi said : Huna b. Nathan told me : I asked the scribe of Rabha, and he told me that the Halakha prevails in accordance with R. Huna b. R. Jehoshua. (Says the Gemara :) In reality it is not so, as the scribe of Rabha says this only to approve his acts. R. Ashi said again that an *απραχτος* (a man who goes idle) must bear the taxes of the city. But this is said only when he was freed by some of his friends in that city who told the chief that he owned nothing from which to pay and he let him go ; but if the chief himself or the officers who were appointed by the government do not like to collect from him because he is idle (although they collect his share from the other townsmen), it is to be considered as a divine help to him and he must not be troubled again. R. Ashi said in the name of R. Johanan : A boundary or a tree which is found between two estates of a proselyte is considered an intervention concerning hazakah, but not concerning corner tithe and concerning defilement. When Rabbin came from Palestine, he said in the name of R. Johanan : It is considered an intervention concerning the two last-mentioned as well.

But how is the law if there was no boundary and no tree, and nevertheless they were separated? R. Mrinus in the name of R. Johanan explained that he acquires title to the whole field which is called after his name. What does this mean? Said R. Papa: If people call it the field which the proselyte used to water from his valley. R. Aha b. Ivya was sitting before R. Assi, and said in the name of R. Assi b. Hanina that a hazuba makes an intervention in the estate of a proselyte. What is a hazuba? Said R. Jehudah in the name of Rabh: This was a mark by which Joshua marked the land which he divided among the tribes of Israel. He says again in the name of the same authority: Joshua did not count but the cities which were placed on the boundaries (*i.e.*, the cities which are enumerated in the Book of Joshua). He said again in the name of Samuel: All that the Holy One, blessed be He, had shown to Moses from the land of Israel was subject to tithes. (It means that from the products growing in those places tithes must be separated biblically.) What does it mean to exclude? The land of the Kenites, Kenizzites, and Kadmonites [Gen. xv. 19].

MISHNA *IV.*: If there are two witnesses that the occupant has consumed the products of a field three years, and after investigation it is found that they were collusive, the witnesses have to pay the whole value of the products from the last three years to the plaintiff. If, however, two have testified for the first year and two others for the second year, and still two others for the third year (and all of them had witnessed falsely), the payment mentioned above must be divided among them, of which each of the parties has to pay a third.

If there were three brothers witnessing, and one stranger testified the same as they had, they may be considered as three parties of witnesses—*i.e.*, one of the brothers said: I am aware that the defendant has occupied this property the first year; the second: I am aware that he has occupied it the second year; and the third testified for the third year. If the stranger, however, says: I testify that the defendant has occupied it all the three years, his testimony is counted to each of them, so that for each year there are two witnesses. If, however, the testimony was found to be collusive, they ought to be considered as one party of witnesses, and the brothers have to pay the whole claim.

GEMARA: Our Mishna is not in accordance with R. Aqiba of the following Boraitha: R. Jose said: When Abbah 'Halaftha went to study the Torah from R. Johanan b. Muri,

according to others the reverse was the case, he questioned him: How is it if one has occupied a property the first year in the presence of two witnesses, and the second in the presence of two others, and the third in the presence of still two others, should this be considered a hazakah, or not? And he answered: It is. Rejoined the former: I am of the same opinion; but R. Aqiba opposes, as he used to say: It is written [Deut. xix. 15]: "A case be established." A *case*, but not half a case (*i.e.*, as each party testifies only for one year, they are testifying to only half a case; but not the whole case).

R. Jehudah said: If one of the witnesses testifies that the occupant has occupied the estate all the three years with wheat, and the other testifies with barley, it constitutes a hazakah. R. Na'hman opposed: According to this theory, if one testifies that he has occupied it the first, third, and fifth years, and the other for the second, fourth, and sixth, should this also be considered a hazakah? Answered R. Jehudah: What comparison is this? In your case one testifies for this year, and the other for other years; but in my case both are testifying for the very same year. The difference is only concerning barley and wheat, about which people are not used to be too particular.

"*If there were three brothers*," etc. There was a promissory note signed by two witnesses, of whom one died, and his brother with a stranger comes before the court to testify that the signature of the deceased is a right one. Rabhina was about to say that this case was familar to our Mishna, which states that three brothers and one stranger are counted legal witnesses. Said R. Ashi to him: There is no similarity at all. In the case of the Mishna half the amount of the claim is collected, because of the testimony of the brothers, and the other half because of the testimony of the stranger. In this case, however, the brothers' testimony collects three-quarters of the whole amount (*i.e.*, the signature of the deceased witness gives the right to collect half the amount. Now when this brother came to testify concerning the signature, his testimony is for a quarter of the whole amount, and the testimony of the stranger who was with him for the other quarter. Hence three-quarters of the whole amount are to be collected by the testimony of the brothers, which is not legal.

MISHNA *V.*: There is a difference in usage of articles: In some cases the law of hazakah applies, and in some it does not. *E.g.*, if one used to keep his cattle in the yard of his neighbor, or a stove, oven, or handmill, or raised there hens, or he

kept there his manure, it is not considered a hazakah. However, if he has made a partition ten spans high for his cattle, or for the other articles mentioned above, or he has kept his hens in his neighbor's house, or has dug three spans in the ground of his neighbor for his manure, or he has made a heap of it three spans high on the same ground, it is a hazakah.

GEMARA: Why should the law differ in the latter part from the first part (is it not a fact that the owner of the yard would protest when a stranger kept his cattle therein without any right)? Said Ula: It is because of the following rule: Usage which does not give title to the property of a deceased childless proselyte, it also does not give it to the property of one's neighbor; and usage which does give title in that case, gives also title in the latter case.

R. Shesheth opposed: Does this rule always hold good? Is it not a fact that ploughing, which is not considered a hazakah concerning the estate of one's neighbor, gives title when it is done on the estate of a proselyte? On the other hand, usage of fruit, which is considered concerning a neighbor's estate, does not give title to the estate of a proselyte. "Therefore," said R. Na'hman in the name of Rabba b. Abuhu, "the Mishna treats of a yard belonging to partners, who usually are not particular if one of them keeps his cattle there; but they are, if one separates his cattle by a partition." Is that so? Have we not learned in a Mishna: If partners have vowed not to derive any benefit from one another they must not enter in their yard, as by entering one derives benefit from the share of his neighbor. Therefore R. Na'hman's above saying was concerning a rear yard, in which usually one is not particular if his neighbor leaves there his cattle. But concerning a partition, they would be particular. R. Papa, however, maintains that both our Mishna and the cited one speak about a yard belonging to partners; but some are particular concerning leaving cattle and some not. Therefore, in a case that may lead to an offence, as in the cited Mishna, it is decided rigorously; and concerning money matters it is decided leniently. Rabhina, however, maintains that partners are never particular with one another. And concerning the case of deriving benefit, the Mishna which treats about vows is in accordance with R. Eliezer, who holds that even a little gift that is usually presented by the storekeepers to their customers is prohibited to him who has vowed not to derive any benefit from his storekeeper, which the rabbis allow.

R. Johanan in the name of R. Bnaha said: Everything (which is not in the agreement) may partners prevent each other from doing in the yard belonging to them except washing, because the daughters of Israel must not be left to disgrace themselves by washing at the bank of the river (as they must stand there with bare feet). And Hyya b. Aba said: It is written [Is. xxxiii. 15]: "And shutteth his eyes against looking on evil," meaning him who does not look upon women when they are occupied in washing. How is this to be understood? If there is another way to pass, and one passes by that way for the purpose of looking, then he is wicked; and if there is no other way, what can he do, as he is compelled to pass them? It means even in the latter case, and nevertheless one must manage not to look upon them.

R. Johanan questioned R. Bnaha*: What is meant by a shirt of a scholar? And the answer was: It covers the whole body, so that no part of it may be seen. And what is meant by a garment of a scholar? If it covers the shirt so that a fragment of it not more than a span should be seen. What is meant by a table of a scholar? That the table-cloth covers two parts of the table, and the third part is uncovered to place there plates and herbs, and the ring of the table (they used to have a ring in order to keep together the table-cloth, to hang it up after the meal), and the ring should be outside. [But have we not learned in a Boraitha that the ring must be inside? This presents no difficulty, as one Boraitha speaks of when there is a child sitting by the table—then it must be inside; or it speaks of the night meal, when it is better it should be inside, so that the servant should not touch it while it is dim; and another Boraitha speaks of a day meal, without a child.] And that of a common man looks like a *tam*, as the dishes are placed around and the bread is in the middle. What is meant by a bed of a scholar? If under it nothing is to be found but sandals in summer-time and shoes in the rainy season; and the bed of a commoner looks like a treasure of *vilis* wherein you may find everything?

R. Bnaha used to mark caves of the dead (for the purpose of defilement). When he came to the cave of Abraham (the Patriarch), he found Eliezer his servant standing outside, and to the question, What is Abraham doing now, he answered: He sleeps in the arms of Sarah, and she looks on his head. And Bnaha asked Eliezer to beg permission for him to enter. He said to

* This is placed here in text because all that was said and done by Bnaha should be together.

Abraham: Bnaha is waiting at the door. Said Abraham: Let him come in: it is known that the evil spirit does not remain in our world. Bnaha then entered, took the measure of the cave, and went out; when he arrived, however, at the cave of Adam the first, he heard a heavenly voice saying: Thou hast seen the image of Adam; but in the face of Adam himself, who is the work of (the Lord), thou hast no right to look. And to the protest: I need to mark the measure of the cave, he was answered: The measure of the outside of Abraham's cave equals the inside of Adam's.

Said R. Bnaha: I have seen the heels of Adam and they appeared to me as the circumference of the sun. Beside the face of Sarah, that of every one else looks like the face of an ape to that of a man. And Sarah's to that of Eve is also like the face of an ape to that of a man; and Eve's to that of Adam himself is also like the face of an ape to that of a man. The beauty of R. Kahana is similar to that of R. Abuhu, etc. (See Middle Gate, pp. 212, 213.)

There was a Magus who used to dig after the dead for the purpose of taking away their shrouds. When he arrived at the cave of R. Tubi b. Mathna, he grasped him by the beard, and Abayi came and requested him to leave him, and he did so. The next year the Magus came again to this cave, and Tubi again grasped him by the beard, and Abayi's request was refused, until scissors were brought and the beard was cut off.

There was a man who said while dying: I bequeath one barrel of earth to one son, a barrel of bones to another, and one barrel of down to the third. And they did not understand what he meant, and came with this question to R. Bnaha. And he asked them if they possessed estates. They said: Yea. Have you cattle? Yea. Have you also *vestes-stragula* (blankets, quilts, mattresses)? Yea. Then he said: If so, this is what your father has bequeathed to you (it means, one shall have the estate, one the cattle, etc.).

There was a man who heard his wife saying to her daughter: Why are you not careful in your unlawful acts? I have ten sons, and only one is from your father. When he was dying he said: I bequeath all my properties to one son (as he did not know which one was his). And as they did not know to which of the sons, the case came to R. Bnaha, who advised them to go and knock on the father's grave until he should come and explain whom he meant. Nine of the sons did so, but the one who was

his did not. Then R. Bnaha decided that all the estates should be given to this one. His brothers then denounced him to the government, saying: There is one man among the Jews who collects money without witnesses and without any evidence. And he was arrested. His wife then came complaining: I had a slave. People came and cut off his beard, removed his skin, consumed his flesh, filled the skin with water, which they gave to drink to their comrades, and they did not give me any of the money or some other equivalent for it. The officers did not understand her, and decided to question the vise of the Jews; perhaps he would understand what it meant. They did so, and he answered: She is complaining about a leather-bag (it means she had a buck: they stole it from her, killed it, consumed the meat, and from the skin they made a leather-bag for water to drink from. They said then: Because he is so wise, he shall sit at the court and judge. He saw, then, that it was written on the *αμβολαη*: A judge who is summoned cannot be named a judge. Said R. Bnaha to them: If so, then any one may come and summon the judge (though he had never any business with him). Should he be no longer qualified to be a judge it ought to be thus: A judge who is found liable in the court, so that money is to be collected from him, is no longer qualified as a judge. And they thus corrected this: However, the sage of Judea maintains that a judge from whom money is collected by a judgment is not considered a judge.

He saw again that there was written at the head of each dead, I, blood, am the cause; and at the head of each life, I, wine, am the cause. And he said to them: According to this, if one falls from the roof or a tree and dies, does also the blood kill him; and also, if you see one dying, give him wine and he will revive? It ought to be written thus: In the head of every sickness, I, blood, am the cause; and in the head of every medicine, I, wine, am the cause. And they corrected thus: In the head of all sickness, I, blood, am the cause; in the head of all medicines, I, wine, am the cause (*i.e.*, if the man would use wine in accordance to his health he would never come to sickness, and only in places where there is no wine is medicine needed—*i.e.*, because there is no wine, sickness is frequent). On the gates of the city of Kaputkaya was written: Anipak, Anbag, and Antell are all of equal measure (so that there is no claim that if one bought an Anpak and received an Anbag, etc.). These measures are equal to a quarter of a biblical lug (said the Gemara).

MISHNA *VI.*: The law of hazakah does not apply to movable pipes attached to the roof-gutters (drains), but does apply to the places of them and also to spouts. It does not apply to an Egyptian ladder or to an Egyptian window; but to both of Tyre it does apply. What is to be considered an Egyptian window? If a human head cannot enter in it. R. Jehudah, however, maintains: If it has a frame, although a human head cannot enter it, the law of hazakah applies.

GEMARA: How is it to be understood that the pipes have no hazakah, and the place has? Said R. Jehudah in the name of Samuel: It means thus: The movable pipes have no hazakah at one side (*i.e.*, if the pipes were fixed that water should come out; *e.g.*, on the north side of his neighbor's yard, so that if the owner of the yard needs this place he has a right to compel the owner of the house to remove them to the south side). However, he has no right, after long usage undisturbed, to insist that the gutters or pipes be entirely removed. R. Hanina, however, explained the Mishna thus: The law of hazakah does not apply to pipes in the respect that, if they are too long, the owner of the yard may insist that they be shortened; the place, however, has a hazakah, so that if the owner claim that they shall be removed, he is not to be listened to. And R. Jeremiah b. Abba said: It means if the owner of the yard wishes to build something beneath, he may; but he has no right to insist on their removal. An objection was raised from our Mishna, which states that the law of hazakah applies to a spout, which is correct in the two first explanations (as a spout, which is more stationary than a pipe, must not be removed or shortened); but in the third, that one may build beneath, to what purpose does the Mishna teach it? Why not? What harm can be done with this to the spout? The Mishna speaks of when the spout was surrounded by a stone building, so that the owner of it may claim that the new building would weaken the stone building surrounded by the spout.

R. Jehudah in the name of Samuel said: Drains which discharge water in the yard of one's neighbor, and the owner of the roof wants to stop it—the owner of the yard has a right to prevent him, claiming, As you have acquired title to my yard for discharging the water of your roof, so I have acquired title to that water of your roof.

It was taught: R. Oshyah said: He may prevent. And R. Hamma said: He may not. He then went and questioned R. Bissa (his father, who was also the grandfather of R. Oshyah)

and he decided that he might prevent. Rammi b. Hamma then applied to him the verse [Eccl. iv. 12]: "And a threefold cord cannot quickly be torn asunder," which means R. Oshyah, the son of R. Hamma, the son of R. Bissa.

"*To an Egyptian ladder.*" What is called an Egyptian ladder? Said the school of R. Yanai: Such as has not four steps.

"*An Egptian window,*" etc. Why does the Mishna explain what an Egyptian window means, and did not so do concerning an Egyptian ladder? Because to the latter it had to state the opinion of R. Jehudah.

R. Zera said: The window in question has a hazakah when it is placed lower than four ells from the ground only; and one can prevent his neighbor from opening such in a building which adjoins his yard only when it exceeds four ells. R. Ailah, however, maintains that the same is the case even when it is higher than four ells. Shall we assume that the point of their difference is, if the court has to coerce one who acts after the manner of the Sodomites (*e.g.*, if one derives benefit from a thing which does not harm any one, the preventer is equalled to the Sodomites, and the question is, Must the court overrule such a preventer or must it be left to the conscience of this man, and the court has nothing to do with it?). Nay; all agree that in such a case the court shall overrule the preventer. Here, however, it is different, as the neighbor might say: It might happen that you would take a footstool, stand upon it to look in at my window, and then will be visible to you what is going on in my house.

There was one who wanted to open a window higher than four ells to his neighbor's yard, and the case came before R. Ami; and he referred it to R. Abba b. Mamal, who decided in accordance with R. Ailah. Said Samuel: To a window which is to be opened for light, whatever size it may be, the law of hazakah applies.

MISHNA *VII.*: To an enclosure the size of a span in width hazakah applies; and if one came to make it in his building which faces his neighbor's yard, the latter has a right to protest. To less than the above size hazakah does not apply, and also no protest can be made against it.

GEMARA: R. Assi, or R. Jacob in the name of R. Manni, said: If he has made a hazakah with the enclosure which was the width of one span, he has made it for four spans. How is this to be understood? Said Abayi: He means to say that if the enclosure one span wide has the length of four spans, he may

increase it to four spans square (as his neighbor does not disturb him from taking the space of four spans in the length, it would be the same as if it were square).

"*Less than that size no hazakah*," etc. Said R. Huna: This is said concerning the owner of the roof only, but the owner of the yard may prevent his neighbor from making an enclosure even less than a span. R. Jehudah, however, maintains that neither of them can prevent the other. Shall we assume that the point of their difference is, if harm done by looking is considered damage, or not? Nay; all agree that it is considered. But in this case such an enclosure not being fit for use, except to hang something in it, is different, as one may say: I can do it without looking into your property. The one, however, who forbids this, maintains that his neighbor may claim: It can happen that while hanging his things in this enclosure he will be frightened, and even unwillingly his face will be turned to my property, and will see what I should not like.

MISHNA *VIII.*: One must not open windows to the yard even when he is a partner in it (without the consent of the other partner). If he bought a house in another yard, he must not open a door to that yard in which he is a partner. If he built an attic upon his house, he must not make its entrance in the yard in question. He may, however, divide a chamber inside of his house, and build an upper chamber upon it, so that the entrance should be through his house.

GEMARA: Why does the Mishna treat about a yard of partners? Is it not the same with the yard of one's neighbor, without any partnership? It means to say not only to one's neighbor's yard is he not allowed, but even to that in which he is a partner. Lest one say: As his partner has to hide from him (such things as he would not like his partner to see) in the yard anyhow, it does not matter if he should open a window to that part which belongs to him; it comes to teach us that his partner may say: Until now I had to hide myself from you in the yard only; but by opening a window from which my house will be visible, I shall have to hide myself in my house also.

The rabbis taught: It happened with one who opened his windows to a partner's yard, and he came before R. Ishmael b. R. Jose, who said to him: My son, thy hazakah is valid, as thy partner has not protested. When this case came up again before R. Hyya, he said: You have troubled yourself to open it, trouble yourself to close it. Said R. Na'hman: If one of the partners

built a wall against the window which was opened to the yard in question and was not disturbed by the owner of it, it is considered a hazakah immediately; as one would not tolerate that his light should be shut off in his face and be silent.

"*If he bought a house . . . he must not open a door to that yard*," etc. Why so? Because he increases walkers through the yard (and this would be disagreeable for the inhabitants of it, as their work in the yard would be visible to people, which they would not like). But if so, why then, does the latter part allow to build an upper chamber inside of one's house? Does he also not increase walkers with this? Said R. Huna: It means that he may divide his chamber horizontally, so that it should serve for an attic; but not to enlarge the building.

MISHNA *IX.*: One must not open in a yard belonging to partners a door or window opposite his partner's door or window: If there is a small one, he must not enlarge it; and if there is one door, he must not make two of it. All this, however, may be done to the public street.

GEMARA: Whence do we deduce all this? Said R. Johanan: From [Num. xxiv. 2]: "When he saw Israel encamped according to their tribes." What did he see? That their doors were not exactly opposite each other. And then he said: They are worthy that the Shekhinah should rest upon them.

"*He must not enlarge it.*" Rammi b. Hamma was about to say, *e.g.*, that if it was the size of four ells, he must not make it eight; because he takes four ells space from the yard. But if it was two ells, he might enlarge it to four. Said Rabha to him: His partner may claim: When you had a small door, I could hide myself from you, which is not the case with a large one.

"*If there was one*," etc. Rami b. Hamma was about to say, when the door was four ells wide, he must not divide it into two each; but if it was eight ells wide, he might divide it in two—each of four. Said Rabha to him: His partner may claim when he had one door: I could hide myself from you, which is not the case when you will have two.

"*To the public street.*" Because one may say: It does not matter that my door is open just opposite yours, as you must anyhow hide from the passers-by.

MISHNA *X.*: One must not make a hole in public ground; viz., pits, excavations, or caves. R. Eliezer, however, permits this, if the surface of the ground remains strong enough to bear wagons loaded with stones.

One must not build enclosures or balconies on the space belonging to public ground; he may do so, however, on the space of his property which faces the public ground. If one bought a yard and there were enclosures or balconies upon public ground, it constitutes a hazakah and may remain so.

GEMARA: Why do not the rabbis permit the same as R. Eliezer illustrated? Because it may happen that it shall break suddenly and will cause damage.

"*Enclosures*," etc. There were enclosures from R. Ammi's property facing an alley, and there was also another man whose property was facing the public ground; and the public complained, and the case came before R. Ammi, who decided that the enclosure should be cut off. Said the defendant: Does not the master's enclosures face the alley? And he answered: My enclosures are facing an *alley*, the inhabitants of which have relinquished their right in my behalf; yours, however, are facing the *public* ground. Who can relinquish to you? R. Yanai had a tree bending over public ground, and another man had the same, of which the public complained (that a mounted camel could not pass). And defendant came before R. Yanai, who told him to leave him to-day and come to-morrow. On that night R. Yanai ordered the removal of his own tree. And when the defendant came in the morning, he told him to remove it. And to the question: Does not the master himself possess such? he answered: Go and see if mine is not removed; if not, yours can remain; but if it is, you must do the same. But why did not R. Yanai remove it before that case came before him? He previously thought that the passers-by were pleased to sit in its shadow; but when he saw that they were complaining, he ordered the removal. And why did he not order the defendant to remove the tree before removing his? Because of what was said by Resh Lakish (Middle Gate, p. 287): Correct first thyself, and then others.

"*In the space of his property*." The schoolmen propounded a question: If one left space for it, but has not yet made the enclosure, may he do it afterward, or not? According to R. Johanan he may; according to Resh Lakish he may not. Said R. Jacob to R. Jeremiah b. Thalipha: I am able to explain to you that there was no difference between the two rabbis just mentioned, concerning the enclosures in question, as both agree that they may be made even at any time. In what they do differ is, if one wants to replace the walls of his property in their former posi-

tion, and their decision was just the reverse. According to R. Johanan he may not; because of that which was said by R. Jehudah (above, p. 35): A path which is used by the majority must not be destroyed. And according to Resh Lakish he may; because even then there is still place for passing.

"*If one bought a yard*," etc. Said R. Huna: If the wall of the yard in question fall, he may rebuild it with the former enclosures. An objection from the following Tosephtha: One must not paint his house with whitewash or any other colored dye at this time to show that he is mourning for the destroyed Temple. However, if he bought such already painted, he may keep it as it is; but if it falls, he must not furnish the same painting to the ones rebuilt. (Hence the refurnishing is prohibited.) You cannot oppose mourning for the Temple to common money matters.

The rabbis taught: When the second Temple was destroyed, many of Israel separated themselves from eating meat and drinking wine. And R. Joshua approached them, saying: My children, why do you not eat meat and drink wine? They replied: Should we eat meat of which sacrifices were brought, or drink wine which was offered at the altar? Said R. Joshua to them: If so, let us not eat bread, as the meal-offering is also abolished? Then we can live on fruit? They replied: But was there not also the firstfruit offering? And was it not also the custom to put water on the altar, which no longer exists? Let us, then, cease the use of fruit, and of water also. And they were silent. Then said R. Joshua to them: My children, come and listen to me. It would be wrong not to mourn at all, because the evil decree is executed. But to mourn too much is also impossible, as there must not be decreed a prohibition for the congregation which they could not stand, as it is written [Mal. iii. 9 *]. And therefore the sages said: When one paints his house, he shall leave part unpainted as a sign of mourning. [How much? Said Rab Joseph: An ell square. And Rab Hisda said: This must be opposite the door.] One may prepare all that he needs for his meal, leaving out some little things as a sign of mourning. And the same is the case with a woman: she may dress with all her ornaments, leaving out some of the unimportant for that purpose. As it is written [Ps. cxxxvii. 5]: "If I forget thee, O Jerusalem, may my right hand forget. May

* Leeser's translation does not correspond at. The commentators try to explain it, but do not succeed. We have, therefore, omitted the translation of the verse, leaving, however, the reference to it.

my tongue cleave to my palate if I do not remember thee; if I recall not Jerusalem at the head of my joy." What is meant by at the head of my joy? Said R. Itz'hak: It is the custom to put some ashes on the head of the groom on the day of marriage. And R. Papa said to Abayi: They used to place it on their foreheads at the place of phylacteries, as it is written [Is. lxi. 3]: "To grant unto the mourners of Zion—to give unto them ornament," etc. And every one who is mourning for Jerusalem will be rewarded by seeing her joy. As it is written [ibid. lxvi. 10]: "Be highly glad with her, all ye that mourn for her."

There is a Boraitha: R. Ishmael b. Elisha said: From that day when the Temple was destroyed it would be only right we should take upon ourselves not to eat meat and not to drink wine; but such a thing must not be decreed, which the majority of the congregation could not endure. And from the day that the Roman government put upon us evil decrees, prohibiting to us the Torah and its commandments, did not allow us to circumcise and redeem our children, it would be only right we should take upon ourselves not to marry and have children, so that the children of Abraham would be destroyed by themselves; but leave Israel, let them do as they please, as it is better they should sin unintentionally than intentionally (as if this should be ordered, they would certainly not observe it).

CHAPTER IV.

RULES AND REGULATIONS CONCERNING UNCONDITIONAL AND CONDITIONAL SALES OR GIFTS OF BUILDINGS, HOUSES, AND PALACES: WHAT IS AND WHAT IS NOT INCLUDED; AND ALSO CONCERNING YARDS, BATH-HOUSES, AND PRESS-HOUSES FOR OIL AND WINE. SALES OF WHOLE CITIES, VALLEYS, FIELDS, WELLS, ETC.

MISHNA *I.*: If one sells a house unconditionally, the yeziah which is upon it is not included in the sale, even when it is open to the house, neither the chamber which is inside, nor the roof if it has a railing ten spans high. R. Jehudah, however, maintains that if it has the appearance of a door, although it is less than ten spans high, it is not included in the sale.

GEMARA: What does *yeziah* mean? Here (in this college) it was explained as *αετο*—gable.* R. Joseph, however, maintains that it is an upper floor with windows. According to the first explanation, the latter one, which is more valuable, it is self-evident is not included in the sale. But according to the latter explanation the first one is included. R. Joseph taught: We find two additional names to yeziah, mentioned in I Kings, vi. 5: "And he built on the wall of the house a gallery (yeziah) round about." It is also named *Zelah* [Ezek. xli. 6]: "And the side chambers—*Zelah*," etc. And also *To* [ibid. xl. 7]: "And every cell (*To*)," etc. The last is also used in Midoth, IV. 6: Said Mar Zutra: All that is mentioned above applies only when it contains four ells. Said Rabhina to him: According to your theory, the succeeding Mishna, which states: "Not the well (it does not matter whether the well is merely dug in the ground or is surrounded by stone walls), although it was written in the bill of sale that he sold to him all that was in the height and depth, it is not included in the sale"—means also that if it does not contain four ells it is (and this is certainly not so)? What comparison is this? The use of a well is not

* The commentator Rashbam explains it as a shelter in the rear; and R. Joseph's explanation means the same, but with windows. Our explanation, however, is in accordance with Schönhak's Dictionary, which seems to us to be the proper one.

the same as the use of a house, while the use of an upper floor is identical with the use of the house; if it contains four ells, it is of value and it is not included in the sale; but if less than this, it is not of value.

"*Neither the inner chamber.*" Was it necessary to teach this? If the yeziah is not included, is it not self-evident that much less is the chamber? It speaks of a case in which in the bill of sale were noted some boundaries of the inner chamber, and lest one say that in such a case it is included, the Mishna comes to teach us that it is not so. And this is in accordance with R. Na'hman, who said in the name of Rabba b. Abuhu that if one sells a house depending on a palace, although in the bill of sale were noted the boundaries of the palace, the buyer cannot claim that he sold him the whole palace, as it is to be considered that the boundaries were noted only to make known where the palace was situated. (Says the Gemara:) Let us see how was the case. If people make a distinction in calling the one a house and the other a palace, and the bill of sale specifies a house, then certainly he sold him a house, not a palace. And if people call the whole building a house (not a palace), then he certainly sold him the house with all its contents? It speaks of a case in which the majority calls it a house, but the minority names it palace. One might say that he sold him the entire building. R. Na'hman comes to teach us that in such a case he ought to write in the bill of sale: "The entire building is sold to you, and I reserve nothing for myself." And because this was not mentioned, it is to be considered that he sold him only one house of this building and the remainder he left for himself. The same said again in the name of the same authority: If one sold a field situated in a valley, although in the bill of sale are specified the boundaries of the valley, he sold him only the field and not the entire valley, as the specifying is to be considered necessary in defining the situation of the valley only. Let us see how was the case? If people make a distinction in calling the one field and the other valley, and the bill of sale speicfies a field, then certainly he sold him a field (etc., etc., as above). And the answer is also the same as above, that because it was not written in the bill of sale that he had reserved nothing for himself, he sold him only one field. And both cases were necessary for R. Na'hman to teach; since, if he had taught only of a house, one might say that there is a difference between using a palace and using a house. But in case of a valley of which the use of

every part is equal, the entire valley is sold. And if he would teach from a valley only, one might say that because there was no necessity for the seller to specify which field of the valley he sold him, as every part of it is used for one and the same purpose, therefore it is considered that he sold him only one field. But in case of a palace the chambers of which are for different uses, it ought to be specified in the bill of sale which house was sold; and as it was not, the entire building was sold: therefore both were necessary.

According to whom is the statement of R. Mari, the son of Samuel's daughter, in the name of Abayi, that if one sells to his neighbor a property, he must write in the bill of sale: "I reserve nothing of it for myself"? In accordance with R. Na'hman's statement in the name of Rabba b. Abuhu.

There was one who said to his buyer: I sell to you the ground of B. Hyya. And there were two pieces of ground that were called B. Hyya (and the buyer claimed that both were sold to him, while the seller insisted that only one was sold to him). When the case came before R. Ashi, he decided that only one was sold (as the seller said to him, "I sell you the ground"—singular, and not the "grounds"); and if even the seller had said the grounds, then it would signify two. And if such were three, the third would not be sold unless he should say: "I sell you all the ground I possess." And even then, if the seller possessed, besides this ground, orchards and vineyards, the latter would not be sold. And if the seller should say, "I sell you my *zihra*" (which means in the Persian language fields and plants), then the orchards and vineyards belong to the buyer, but not houses nor slaves, unless he said, "I sell to you all properties I possess."

If in a bill of sale for real estate there was specified a boundary of a length of one hundred ells on the west side, and of the length of fifty ells only on the east side? Said Rabh: Title is given to the buyer corresponding with the shorter boundary only (*i.e.*, that the specifying of the one hundred ells on the west side is to be considered only a mark to identify the beginning of his field).

Said both R. Kahana and R. Assi to Rabh: Let it be considered that he sold to him a triangle (*i.e.*, that it should be measured from the end of fifty on the east side to the one hundred of the west side, and the other estate should not belong to him). And Rabh did not answer. (Says the Gemara:) If the

adjoining fields on the west side belonged to A and B, and on the east side to C and D, and in the bill of sale was specified from the boundary of A and B to the boundary of D on the other side, then even Rabh admits that it is to be considered he sold him a triangle, as the boundary of C was not mentioned.

If E owns a field adjoining A's field from east to west, and B's from north to south, and he comes to sell it, he must write in the bill of sale: "I sell you the field adjoining A's field from both sides, and also B's from both sides." And it is not sufficient that he should write: "My field, which is between A's and B's fields," as then he could claim that he sold to him the half of it only (*i.e.*, a half on west side adjoining A's and a half on south side adjoining B's, and the remainder he reserved for himself). If in the bill of sale the three boundaries of the field were specified, but not the fourth, according to Rabh title is given to the buyer from all three boundaries, except a bed of the fourth, which was not specified in the bill of sale. Samuel, however, maintains that title is given to the whole, even to the fourth. But R. Assi maintains that title is given to the buyer for one bed all over this field only. And the reason of his theory is that he agrees with Rabh, that from the fact that the fourth boundary is omitted in the bill of sale, it is to be assumed that he reserved it for himself. And this being reserved for himself, so was his intention with the other boundaries, and the specifying of the three was meant to give him title to one bed all over the field.

Said Rabha: The Halakha prevails that the buyer acquires title to the whole field, even to the fourth boundary, provided it is contained in the three boundaries; but if it is not contained, title is not given. And even if it is, but it contains inoculated trees, or the fourth boundary was of a size in which nine kabs of grain could be sown, it is excluded.

Let us see! Rabha states that if there were inoculated trees, or it were nine kabs, title is not given, from which it is to be understood that if it is not contained properly, title is not given to the fourth boundary, although it does not contain the above. We may infer from this statement that although he has not written in the bill of sale that he reserved nothing for himself (as is said above that so it must be written in a bill of sale), it is supposed that he reserved nothing for himself, and also that the Halakha prevails that if it is contained title is given, provided there were not trees, and the size was less than nine kabs. But

if there were, title is not acquired. However, it was taught in the name of Rabha just the reverse; and therefore, if such a case came before a court, we must leave it to the consideration of the judges.

Rabba said: If A and B were partners in a field, and A sold his share to C, stating in the bill of sale, "I sell you the half I have of this ground," then all his share is sold, and he has reserved nothing for himself. If, however, it states, "Half of the ground I possess," then he sold him only a quarter of the whole field, which is half of his. And to the question of Abayi: "Why should we make a difference between the two statements (is it only because in the first statement the 'ground' was mentioned later, and in the other statement the expression 'ground' is mentioned first)?" Rabba kept silent. Said Abayi: I thought that because he was silent he receded from his statement, and accepted my opinion; but it was not so, as I have seen the bills of sale which were approved by the court of my master, and in reference to the expression, "I sell the half which I possess in the ground," the court has marked in its approval "that a half of the whole field is sold to so and so," and in reference to the bill of sale which was written, "A half of the ground I possess," the court's approval was: "A quarter of the whole field is sold to so and so." Rabha said again: If two partners have divided their estate, and one of them says to another, "I sell you my share in the ground," and he shows him the boundary, that it begins from the ground belonging to his partner after the division, then all his share is sold. But if the same shows him the boundary of his estate not from the place which belongs after the division to his former partner, but from the opposite side, then a field of nine kabs from his share is sold to him, but not his entire share.* And also here Abayi questioned him the reason of the different decisions, at which he again kept silent; and the schoolmen who heard this thought that he had receded from his statement, and in both cases his whole share was sold. In reality, however, it was not so. As R. Youmar b. Shlamjah said: Abayi explained to me that there is no difference whether he has shown him the boundary from which he has divided, or the opposite side. If he has added

* In the text are only a few words, their meaning being very obscure. The commentators Rashbam and Rabana Gershom differ in their explanation, and in the first saying of Rabba we have adopted Rashbam's interpretation, and in the second Gershom's, though both are very complicated and difficult.

to his statement, "and all of its boundaries," then his entire share is sold; but if he has added nothing, then a field of nine kabs only is sold.

It is certain that, if a sick man said in his last will, "So and so shall share my properties," he meant the exact half; but how is it if he said, "Give a share to so and so in my properties"? Said Rabhina b. Kisi: Come and hear the following Boraitha: If one said, "Give a share to so and so in my well" —said Symmachos: No less than a quarter is meant (as it is certain that he wanted to help him out in watering his fields, and the rabbis suppose that a quarter of the well suffices for this purpose). If, however, he said: "Give a share from my well in his barrels" (in which the above purpose cannot be supposed), not less than an eighth part is meant. (This Rashbam explains as implying that he wished to help him out in watering his cattle. R. Gershom maintains: So was then the custom —to fill their barrels with water, for the purpose of using it the whole year.) And if it was said: "Give him a share from my well for his pots," not less than a twelfth part is considered; and if it was said: "Give him for his small vessels," then a sixteenth part* of the well is meant.

Hence we see that, according to Symmachos, if he said, "Give him a share in my well," without any additional remarks, a quarter is meant; and the same is the case when he said, "Give him a share in my properties."

The rabbis taught: A Levite who sold a field to an Israelite with the stipulation that the tithes of the field (which the Israelite must separate) should belong to him, this stipulation is valid; and if the stipulation was, "to me and to my children," if the Levite dies, the tithe must be given to his children. But if he said, "So long as the field may be in your hands," then, if the Israelite should sell it and rebuy the same thereafter, the Levite has nothing more to do with it. But why should the tithe belong to him? Is there not a rule that one cannot grant a thing which is not as yet in existence, and as the products of the field have not as yet come forth, consequently the tithe is not in existence? The above stipulation is to be considered as

* The reason is, according to Rashbam, that all those quantities were known for said purposes. However, he himself was not satisfied with this exposition, and explained it in accordance with Symmachos's theory elsewhere, that all doubtful moneys or properties must be divided. But it is very complicated, and therefore we leave its interpretation to the reader.

if he should say: The space in which the first tithe shall grow I reserve for myself.

Said Resh Lakish: From this we may infer that if one sold a house with the stipulation, "The upper *diæta* (chamber) shall remain for him," the stipulation is valid. To what purpose does he state so? Is it not said above that even without any stipulation, if it is not plainly stated in the bill of sale that this *diæta* goes with the house, it remains the owner's? Said R. Zebid: Resh Lakish meant to teach that if there was such a stipulation, then the owner has a right to make enclosures in the attic, facing the yard of this house, and the buyer cannot prevent him, as the stipulation was for this purpose. And R. Papa maintains: If the seller wants to build another attic upon that one, he may do so.

(Says the Gemara:) According to R. Zebid's explanation, it is correct, what Resh Lakish said: "From *this* we may infer," as the above Boraitha teaches that his stipulation is to be considered as reserving space for himself. So also with the stipulation as to the attic—he reserves space for himself to make enclosures, etc. But according to R. Papa's explanation, how can this case be inferred from that Boraitha? This difficulty remains.

R. Dimi of Nahardea said: If one sells a house with the intention of giving title to all its contents, although the bill of sale states from the bottom to the top, title is not acquired in wells, etc. (if such there were), unless he writes: "You shall acquire title from the depth of the earth to the height of the sky." And it is not sufficient to state: "From the depth to the height of this house is sold to you"; and the reason is because the last expression gives title only to that which is beneath the house, like a cellar, basement, etc., and also to the roof and the attic, but it does not suffice for the well and its stone walls, which are not included in the same. However, the expression, "from the depth of the earth to the height of the sky," includes them also, and other caves which may be found beneath the house, and also above the roof, if there is an attic that measures more than ten spans in height and width.

The schoolmen * propounded a question: If one has sold or presented the house to one man and the *diæta* to another, should it be considered a reservation, or, because he sold the *diæta* to

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* Transferred from 148*b* in this Tract.

some one else, he reserved nothing for himself, and it cannot be considered? And if you will say that such is not considered, how is it if the seller said: "The house is sold to you except the *diæta*" (but did not say, "I reserved it for myself")? Said Rabha in the name of R. Na'hman: If we conclude that the house to one and the *diæta* to another is not considered a reservation, the latter case, besides the *diæta, is* to be considered, and it will be in accordance with R. Zebid, who said above that if he likes to make enclosures, etc., he may do so. Hence we see that, as he left the *diæta* for himself so he did with the space of the enclosures.

MISHNA *II.*: Title is not given to a well, or to the stone wall thereof (if this was not plainly mentioned in the bill of sale of the house), although there is mentioned that he sold him the depth and the height; however, the seller must buy a way to the well from the new owner of the house. So is the decree of R. Aqiba. The sages, however, maintain that it is not necessary; and R. Aqiba admits that it is not necessary for the seller to buy a way if he said plainly that the well in question was not included in the sale. If, however, the house was sold to some one, and the well to some one else, it is not necessary for the latter to buy the way to it from the owner of the house, according to R. Aqiba; but according to the sages it is.

GEMARA: Rabhina was sitting and deliberating the difficulty of the expressions in the Mishna, *Bour* (well) and *Duth* (a well surrounded by a stone wall). Are they not for the same purpose? Why, then, was it needed to mention both? Said Rabha to him: Come and hear the following Boraitha: *Bour* and *Duth* both meant a well which is dug in the ground, but the first means solid ground without a wall for containing water, and the second means surrounded by a stone wall. (Hence if the Mishna should mention the first, one might say that because it is not surrounded by masonry it is not included in the sale; but the second, which is a kind of building, is included. And if the second were mentioned, one might say that because it is a separate building and of value, therefore it is not included; but the first, which is not of great value, is; therefore both are needed.) And so also explained Mar the Elder, the son of R. Hisda, to R. Ashi.

"*He must buy a way,*" etc. And the point of their differing is that R. Aqiba holds that usually the seller sells his goods with a good eye (explained above, p. 98), and the rabbis hold

the contrary. And wherever it is said: "R. Aqiba is in accordance with his theory that the seller sells his goods with a good eye," the argument is based upon this statement. [And lest one say that the point of their differing is something else, as, *e.g.*, the seller could not intend that one should fly to his well through the air, etc., therefore there is repeated in the latter part of the Mishna the same difference of opinion, to teach that only in the supposition of a good and bad eye is the point of their differing.]

It was taught: R. Huna in the name of Rabh said: The Halakha prevails in accordance with the sages; and R. Jeremiah b. Aba in the name of Samuel: The Halakha prevails in accordance with R. Aqiba. Said the latter to the former: Why, many times I said before Rabh that the Halakha prevailed in accordance with R. Aqiba, and he said nothing to me. And he rejoined: That was because you taught before him the reverse —that R. Aqiba was of the opinion that the seller sells with a bad eye."* Said Rabhina to R. Ashi: Shall we assume that both Rabh and Samuel decided in accordance with their theories elsewhere (Chap. I., p. 16), where they differ also concerning brothers who have divided their inheritance; and if it is so, why have they repeated this statement twice? (Answered R. Ashi:) It was necessary, as, if one of the two were cited, one might say that Rabh so decided concerning brothers, as one might claim: I like to dwell in the house wherein my parents dwelt." As it is written [Ps. xlv. 17]: "Instead of thy fathers shall be thy children." But in the other cases he would agree with Samuel. And if the other case were stated, one might say that only in this Samuel differs with Rabh, but concerning brothers Samuel agrees with him. Therefore both statements were needed.

Said R. Na'hman to R. Huna: Should the Halakha prevail as we declare, or in accordance with you? And he answered: The Halakha should be established in accordance with you, as you are nearer to the Exilarchs, whose judges are competent and can be relied upon.

It was taught:† Two houses, one beyond the other, so that one has to pass the other in going to the street or the yard, and both are sold, or presented as a gift, to two different persons—

* This explanation is the best we can offer, not to contradict Rashbam and R. Gershom (*q. v.*).

† This is a Boraitha with the unusual expression Itemar. See Explanatory Remarks (back of title page).

neither of them has the right to pass the other's house without his permission, and much less when the inner house is sold and the outer is presented as a gift. But how is the case if the outer house is sold, and the inner is presented as a gift? The schoolmen were about to say that the same is the case. However, they were opposed from the following Mishna, which states, in the last Mishna of this chapter, that "there is a difference with a gift," etc., from which we see that all agree that he who makes a gift does so with a good eye. The same is the case here, when the owner of the house has at one time sold the outer, and made a gift of the inner, as it was with a good eye, so that he shall have a right to pass.

MISHNA *III.*: If one sells a house, the door is sold, but not the key to it; the stationary mortar in the house, but not the movable—the στροβιλος (every revolving body—here, however, is meant the lower stone of a handmill), but not the mill-funnel, nor an oven or a stove. If, however, he said to him, "The house with all its contents," all of these are sold.

GEMARA: This Mishna is not in accordance with R. Meir, who said: If one has sold a vineyard, he has sold all the vessels which are used for same.

The rabbis taught: If one has sold a house, he sold with it the door, the bolt, and lock, but not the key; the engraved mortar, but not that which is only attached; the lower stone, but not the mill-funnel, nor the oven or stove nor the handmill. R. Eliezer, however, maintains that all that is attached to the ground is to be considered as the ground proper. If, however, the seller said, "The house and all its contents," all of them are sold. But in any case, the well, the surrounding stones thereof, and the *yeziah* are not sold.

R. Nehemiah b. R. Joseph sent a message by a woman to Rabha b. R. Huna the minor* in the city of Nahardea: When this woman shall appear before you, you shall collect on her behalf the tenth of all the properties belonging to her father, for her support, even from the lower stones of the handmills. Said R. Ashi: When we were with R. Kahana we used to collect for such a purpose even from the rent of the houses (the law is, that for the support of a daughter a tenth of the real

* According to Halpern he was of the time of R. Huna the Exilarch, and was called "minor" to distinguish him from the former. Others, however, say that it must be Hamnunah.

estate is to be collected, and R. Ashi holds that the rent of real estate is to be considered the same for this purpose).

MISHNA *IV.*: If one sold a yard, the houses, wells, cellars, and caves are included, but not movable property. If, however, he said, "with all their contents," all is sold; in any case, if there were bath or press houses, they are not included. R. Eliezer, however, maintains: If one has sold the yard without any explanation, he has sold only the ground thereof, but nothing else. (Even if, according to the amount which was paid by the buyer, it seems that all its contents are sold, as the law of deceiving does not apply to real estate.—Rashbam.)

GEMARA: The rabbis taught: If one sells a yard, the outer houses, the inner ones, *Beth Hulsauth*,* and stores which are open inside are included in the sale, but not those which are open outside. If, however, they are open on both sides, they are included. R. Eliezer, however, maintains that if one sold the yard he sold only the *moles* (*i.e.*, the great mass of the air). The text says if they are open from both sides they are sold with it; but has not R. Hyya taught that they are not? This presents no difficulty. Our Boraitha speaks of that of which the main use was inside, and R. Hyya speaks of that of which the main use was outside.

"*Eliezer said*," etc. Said Rabha: If the seller said: "I sell you this foreyard," all agree that the houses are included; but if he said: "I sell you the yard," they differ. According to the rabbis, the yard with all its contents is meant, as the yard of the tabernacle, which is written, "the length of the yard" [Ex. xxvii.], and all its contents is meant; and R. Eliezer holds that with the word "yard" is meant the air only.

Rabha in the name of R. Na'hman said: If one has made a hazakah on the *Chulsu*, title is acquired in the ground to a depth at which silver or gold, if found, belongs to him. Is this not self-evident? Has not Samuel said: If one sold ten fields in ten different countries, as soon as he has made a hazakah on one of them, title is acquired to all? Lest one say that there is a difference, as the surface of the earth is alike everywhere, and the fields are similarly adapted for planting, they are therefore considered as if they were joined each to the other; but in our case the use of the two things mentioned is different,

* A Beth Hulsauth, according to Rashbam, means sand of which glass is made; to Gershom, it means rock. Schönhak, however, maintains that it is a Greek word, meaning *bank*. The reader may choose.

and one might say that title is not given to the ground—therefore Rabha's statement.

MISHNA *V.*: If one sells a press-house, the sale includes the trough, the press-beam or press-stone, and the poles, but not the boards that are put on grapes while pressing; neither the wheel nor the treading rod. If, however, he told him, "This press-house, with all its contents," all is sold. R. Eliezer, however, maintains that the expression "press-house" means the treading-rod only.

GEMARA: The rabbis taught: If one sell a press-house, the sale includes the bronze plates that prevent the grapes from scattering, the trough, the press-beams, and lower stones of the handmill, but not the upper stones. If, however, he said, "With all its contents," all is sold. In any case, neither the boards which are put on the grapes while pressing, nor the sacks, nor the packing-bags are sold. R. Eliezer, however, maintains that he who sells a press-house sells the treading-rod also, as the expression "press-house" means chiefly the "treading-rod."

MISHNA *VI.*: If one sell a bath-house, the sale does not include the boards on the floor (the baths at that time were heated beneath the stone floors, and boards were placed on the floor for stepping upon), the basin, neither the curtains on the doors. If, however, he said, "With all its contents," all is sold; but in any case the sale does not include the channels with water, nor the wood piles prepared for the bath-house.

GEMARA: The rabbis taught: If one has sold a bath-house, the sale includes the separate houses for keeping the boards, the tubs, the basins, and the curtains; but not the boards proper, neither the tubs, nor the basins, nor the curtains. If, however, he said to him, "With all its contents," all is sold. In any case, however, the channels that contain water for the use of bathing in the summer and rainy seasons are not sold, nor the houses for storing the wood, unless he said: "The bath-house with all its implements," then the sale includes everything that may be used for bathing purposes.

There was a man who said: "I sell you the press-house with all its implements," and there were some stores outside of the press-house, in which poppy was spread out for drying purposes, and the buyer claimed that they were also included, while the seller claimed they were not. The case came before R. Joseph, who decided in accordance with the Boraitha just cited,

that in such a case everything that may be used for that purpose is sold. Said Abayi to him: But does not R. Hyya teach the contrary? Therefore said R. Ashi: It must be investigated how the sale was; if he said, "the press-house with all its implements and also its boundaries," then title is given to all of them, but not otherwise.

MISHNA *VII.*: If one sells a town, the sale includes houses, wells, caves, bath and press houses, pigeon-houses, and also Beth Hashal'hin, but not the movable property, unless he said, "the town with all its contents"; then, even if there were cattle or slaves, they are also included in the sale. R. Simeon b. Gamaliel said: He who sells a town sells also the *santer* (the meaning will be explained farther on).

GEMARA: Said R. A'ha b. R. Ivya to R. Ashi: From this Mishna is to be understood that slaves are considered movable property; as, if they were to be considered real estate, then they would be sold with the town without any stipulation. Answered he: Even according to your theory that they are considered movable property, why does the Mishna state that if he said, "*even* with all its contents," slaves are sold also, from which is to be understood that they are not movable property proper? And what could you answer to this—that there is a difference between movable property that must be carried and that which is self-moving? The same answer can apply also to the theory that slaves are considered real estate, as there is a difference between stationary real estate "and that which is self-moving."

"*Sold the santer.*" What does this word mean? Here in Balylon they explained it "guardsman," or "bailiff" (a slave). Simeon b. Abtulmus said: It means a *pagus* (land that surrounds the town). According to him who explains it as "guardsman," etc., so much the more is the *pagus* included in the sale; but according to him who explains it as a *pagus*, the guardsman is not included. An objection was raised from our Mishna, which states: "press-houses and Beth Hashal'hin," and the schoolmen explained the expression *shal'hin* (which everywhere means dry field) as meaning the gardens around the town, which also usually ought to be watered. And this is correct only for him who explains the word *santer* as a *pagus*, when the Mishna is to be explained thus: The first Tana holds that only the gardens around the town are included, but not anything else; and R. Simeon b. Gamaliel came to add the *pagus*; which, according

to his opinion, is also included. But according to him who explains *santer* as a "guardsman," if it be assumed that the first Tana speaks about gardens, should R. Simeon answer him with a "guardsman"? Nay! The explanation of the word *shal'hin* is not gardens, as you thought, but, as is everywhere explained, dry land, which means *pagus*. [And this explanation is correct, as it is written [Job, v. 10]: "And sendeth out waters," etc., which is the translation of *Veshilea'h.*] And R. Simeon b. Gamaliel came to say: Not only a *pagus*, but even the "guardsman," is also included.

Come and hear another objection! R. Jehudah said: The *santer* is not included, but the *anqlmus* (the scribe of the city, who was usually a slave to whom all the surrounding fields on which the taxes were to be collected was known). Hence as the scribe *anqlmus* means a man, so also must *santer* mean a man? Why? *Santer* may mean a *pagus*, and *anqlmus* a man. But this cannot be, because of the latter part of the said Boraitha, which states: It does not include, however, the *shirih*, neither the villages around the town, nor the forests which are near it, and also not the *vivarium* of wild beasts, fowl, or fish. And to the question, What means the word *shirih?* it was said by R. Aba: It means pieces of paguses (*i.e.*, dry land surrounding the town, broken by rocks). Now can you say that part of the *pagus* is not sold, while the whole *pagus* is? Reverse the names! R. Jehudah said: The *anqlmus* is not sold, but the *santer* is.

But how can you say that R. Jehudah is in accordance with R. Simeon? Does he not hold with the rabbis, who said: "The villages that surround the town are not sold," while R. Simeon b. Gamaliel said plainly in a Boraitha: The sale of the town includes the villages near by also? It does not matter. R. Jehudah may agree with him in one thing, and differ in another.

"'*Vivarium' of wild beasts,*" etc. There is a contradiction from the following Boraitha: If villages belong to the town, they are not sold with it; if the town contains one part of the sea, or it has a *vivarium* of wild beasts, fowl, or fish, they are sold therewith. This presents no difficulty! One Boraitha speaks of when the entrance to the *vivarium* was from the city, and the other speaks of when the entrance was from the field. But does not the first Boraitha state: Nor the forests which face the town (which means also the entrance from the town)? Read: The forests that are separated from it.

MISHNA *VIII.*: If one sells a field, the sale includes the stones which are needed for its use; and if it was a vineyard, the sticks which are used for keeping the vines in order. Also the stalks that are attached to the ground, the reed-bushes if they take a space less than that in which a quarter of a kab can be sown, the hut (where the watchman guards) if it is not smeared with clay, and a carob or a sycamore uninoculated; but not the stones, the sticks of a vineyard which are not for use at that time, neither the grain that is not attached to the ground. If, however, he says, "with all its contents," all is sold. In any case, however, the sale does not include the reed-bushes if they take more space than said above, and not the hut if smeared with clay, and not a carob or sycamore when inoculated.

GEMARA: What stones are to be considered to be needed for use? Here in this college it was explained, stones which are prepared for laying upon the sheaves, that they may not be scattered by the wind. Ula, however, said: It means stones that are arranged for a wall.

But did not R. Hyya teach: The stones that were gathered in heaps for this purpose? Read: arranged. To him who explains the stones as for laying upon the sheaves—according to R. Meir, who says elsewhere that if one sells a vineyard all the things which are useful for it are sold therewith, the stones in question are included, even when they are placed outside the field; and according to his opponents, only when they are placed in the field and prepared for this purpose. And to Ula's explanation that it means stones for a wall—according to R. Meir even when they were not arranged, and to his opponents only when they were arranged.

"*The sticks,*" etc. The school of R. Yanai says: It means posts for supporting the vine, in order to prevent its bending. And according to R. Meir, even when they were not prepared for this purpose; and to the rabbis his opponents, however, only when already placed under the vine.

"*Stalks which are attached,*" etc. Even when they are ripe for harvesting.

"*The reed-bushes,*" etc. Although they are growing separately, or thick ones, which have nothing to do with the vineyard.

"*The hut,*" etc. Although it was not attached to the ground.

"*And the carob,*" etc. Although thick and strong.

"*But not the stones,*" etc. According to R. Meir, when they were not prepared for this purpose, and according to the rabbis when they were outside of the field; and also to Ula's explanation—according to R. Meir, when they were not prepared, and to the rabbis, when they were not arranged.

"*The posts for supporting,*" etc. According to R. Meir, when they were not prepared, and according to the rabbis, when they were not placed under the vine.

"*When they were not attached,*" etc. Even so they still needed the ground for drying.

"*And not the reed-bushes.*" Although they are still small. And R. Hyya b. Aba said in the name of R. Johanan: Not reed-bushes only, but even if there was a small bed of spices, having a separate name, it is not included in the sale. Said R. Papa: Provided they are called the spices of so and so.

"*And not the hut,*" etc. Although it were attached to the ground.

"*Nor the carob,*" etc. Whence is this deduced? Said R. Jehudah in the name of Rabh: From [Gen. xxxiii. 17]: "And the field of Ephron . . . and all the trees that were in the field, that were in all its borders round about, were made sure"; from which is to be understood that all those without the borders were excluded (and so also the inoculated carob, etc., are of separate value and had nothing to do with his field). Said R. Mesharshia: From this passage we infer that the boundary is sold to the buyer with the field biblically; *i.e.*, because it is written "round about," which is the boundary, and was sold by Ephron with the field.

R. Jehudah said: It is advisable for one who sells his estate to write in the bill of sale "acquire title to the trees, to the young plants, also to those trees that do not yield fruit." And although title is given to all these, even if it were not so written, it is better for the bill of sale to contain the words just mentioned. If one said: "I sell you the ground and date trees," then, if there were such on his estate, he must give him two of them; and if there were not, he has to buy two for him; and if he possesses them, but they were mortgaged, he has to redeem two for him. If he said: "I sell you the estate with the date trees," if the estate contains such the sale is valid; and if not, the sale is void. If he said: "An estate on which there are date trees," and there were none, the sale is valid; for he meant, it is fit for them. If he said: "I sell to you this estate,

except such and such a tree," it is to be investigated whether this tree is a good one that yields much fruit—then he reserves it for himself; but if it was a bad one, which yields no fruit at all, or only a little, and in this field were better ones, so much the more does he reserve them for himself. If he said: "I sell you this field, except the trees," if there were many kinds of trees they are certainly not included; but even if it contained only date trees or vines, they are excluded also. If, however, there were trees and vines, the trees only are excluded; and if there were date trees and vines, the date trees are excluded but not the vines.

Rabh said: A date tree is considered a reservation only when he must ascend with a rope for gathering the fruit; but if not so high, it is not considered a reservation. The judges of the Exile (Samuel and Karna), however, maintain: If it does not hinder the yoke of oxen which are ploughing around it, it is not considered a reservation; but if it does hinder, it is. However, they do not differ, as Rabh speaks of a date tree and they treat of other trees.

R. A'ha b. Huna questioned R. Shesheth: How is it if the seller says: Accept the half of such and such a carob? It is certain to me that he does not acquire title to other carobs; but I doubt whether he acquires title to the half of the carob in question? And the answer was: He does not. He objected to him from the following Boraitha: If he said, "Accept the half of such and such a carob," title is not acquired to the other carobs, by which is to be understood that he does not to the other carobs, but he does to the half in question? And he answered: Nay! Even to the half left to the buyer, title is not given, this case being similar to one in which it was said, "I sell you this field, except the half of such and such a one." Were we to assume that the buyer acquires title to all his fields except the half in question, although he said plainly, "I sell you *this* field," it must be said he does not acquire title to any except to that which he had shown him; and that his remark, "except the half field," etc., was but redundance. The same is the case here. If he said, "I sell you this field, except the half tree," the last word is to be considered redundance.

R. Amram questioned R. Hisda: If one has deposited something with his neighbor, and taken from him a receipt (approved by witnesses), and thereafter the depositary claims that he has returned the bailment, how is the law? May it be said that,

because if he were to claim that the bailment was taken away from him by force, he would be trusted, the same should be the case with the claim, "I have returned," or the depositor has a right to say: If it were so, how comes thy receipt in my hands? And he answered: He is to be trusted when he takes an oath, the same being the case when the depositary claims "it was taken away from me by force"—he must take an oath.

Shall we assume that R. Amram and R. Hisda differ on the same point as the Tanaim of the following Boraitha differ: If one holds a document which witnesses to an amount of money given by him to his deceased partner for a half profit, and claims that the amount was not returned to him, while the orphans say that they are not certain whether the amount was returned? The judges of the Exile said: The plaintiff has to take an oath, and collects the whole amount. The judges of Palestine, however, maintain that he collects only the half with this oath. And all of them agree with the sages of Nahardea, that of the money which is given for the purpose of a half profit half of the amount is considered a loan and the other half a deposit. (See Middle Gate, p. 277.) Now is it not to be supposed that the point of their differing is that one party holds that the claim of the plaintiff, "The document in my hand gives evidence that the amount was not returned," is to be listened to, and the other party (who says that with the oath he collects the half only) maintains that such is not considered evidence? Nay! All agree with R. Hisda, and the point of their differing is, that one party holds if the deceased had returned, he would have notified his heirs, and the other holds it may be that death prevented him from doing so.

R. Huna b. Abi sent the following message: A depositary who claims that he had returned the bailment, although his receipt is still in the hands of the depositor, is to be trusted (with an oath), and with a document of a half profit in the hands of the plaintiff suing the orphans, he may swear and collect the whole amount. Do these two statements contradict each other (as in the case of a depositary the document is in the hand of the plaintiff, and the *defendant* is trusted with an oath, and in the case of a half profit the *plaintiff* is trusted with an oath)? The latter case is different, because, if the deceased had made return, he would have notified his heirs. Said Rabha: The Halakha prevails concerning orphans, that he takes only the half with an oath. Mar Zutra, however, said: The Halakha

prevails with the judges of the Exile. And to the objection of Rabhina, that Rabha had long ago decided that he takes only the half with an oath, he answered: We have learned the reverse; *i.e.*, that the judges of the Exile hold that he takes the half only with an oath, and the Palestinians, that he collects the whole amount. Hence my decision is the same as Rabha's.

MISHNA *IX.*: In selling a field, if it contains a well, cistern, or pigeon-house, no matter whether they are still in use or damaged, they are not included in the sale. However, the seller must buy a way from the buyer for passing to them. So is the decree of R. Aqiba. The sages, however, say that it is not necessary. R. Aqiba, however, admits that if the bill of sale states, "except the above things," he need not buy a way. If the seller sold the above separately to another—according to R. Aqiba it is not necessary for the buyer of them to buy a passage, and according to the sages it is. This is all said concerning a sale; but if the owner of the field has made a gift of it, title is given to the field with all its contents. The same is the case when brothers divide their inheritance, and the field falls in a share of one of them: he acquires title to all its contents.

If one made a hazakah on the estate of a childless proselyte, the hazakah applies to all the above-mentioned things, if they were to be found on it. If one consecrate his field, all that is to be found in it is sanctified. R. Simeon, however, said: The above-mentioned things are not included in the sanctification; but if there was an inoculated carob or a trunk of a sycamore, it is included, because while growing they are nourished by the sanctified ground.

GEMARA: What is the difference between a sale and a gift? Jehudah b. N'qusa explained before Rabbi: The one who makes a gift, if he desires to reserve any part of it for himself, he ought to state so plainly, which is not the case with a seller, who needs money: the details of the sale must be determined by the buyer, and if not so done, the seller has the preference.

There was a man who said in his will: Give to so and so my house that contains a hundred barrels (*i.e.*, that within the width, length, and height of the house ten barrels square could be placed). After investigation it was found that the house contained one hundred and twenty barrels (*i.e.*, twelve rows, each of ten barrels), and no other house was found on the deceased's estate. And Mar Zutra said: The will states a hundred, but not a hundred and twenty. Said R. Ashi to him:

Did not our Mishna state: All this is said concerning a sale, but concerning a gift title is given to all; and the reason is that he who makes a gift does it with a good eye? The same is the case here. The deceased thought that it contained a hundred only. He therefore said so, that the donee should be aware that he bequeathed him such a big house, but not to exclude it if it contained still more than he thought, as it must be supposed it was given to him with a good eye.

"*If one consecrated his field*," etc. R. Huna said: Although the rabbis have declared that he who buys two trees that are between others does not acquire title to the ground beneath, if the seller has sold the ground with the trees, but reserved two trees for himself, the ground beneath belongs to him. And even R. Aqiba's theory, that usually a seller sells with a good eye, is only concerning a well, etc., which does not cause any harm to the ground; but as for trees, which while nourishing do so, if the buyer should not agree that the ground beneath should belong to the seller, he would tell him to cut down the trees and go; and if he did not do so, it must be supposed that he was willing that the trees with the ground beneath should remain to the seller forever, so that in case the trees should wither he might plant others instead.

CHAPTER V.

RULES AND REGULATIONS CONCERNING SALES OF SHIPS, BOATS, ANIMALS, AND TEAMS; CONCERNING BROODS OF PIGEONS AND BEASTS; TREES, WITH THE GROUND AND WITHOUT. HOW TO ACQUIRE TITLE TO FRUIT AND FLAX. OF ARTICLES WHICH BECAME DEARER OR CHEAPER BETWEEN THE TIME OF SALE AND DELIVERY. AT WHAT TIME THE WHOLESALERS AND STOREKEEPERS HAD TO CORRECT THEIR WEIGHTS AND MEASURES, AND OF WHAT MATERIAL THE WEIGHTS MIGHT AND MIGHT NOT BE MADE.

MISHNA *I.*: If one sells a boat, the sale includes the mast, the flag, the shovels, and all things pertaining to the leading of the boat, but not the slaves, and the sacks for carrying goods, nor the *entheca*. If, however, he sells the boat with all its contents, all is sold.

GEMARA: The rabbis taught: If one sold a boat, the sale includes the *scala*, and also the well with water therein. R. Nathan said: The sale includes also the safety boats. And so also said Symmachos, but he named them *dugit* as in Palestine, while R. Nathan named them *bizit* as in Babylon.*

It was taught: To acquire title to a boat, according to Rabh, as soon as one made a little drawing on it title is given. Samuel, however, maintains that title is not given unless he moved the entire boat. Shall we assume that they differ in the same way as the Tanaim of the following Tosephtha do: How does one acquire title by transferring? By taking hold of the feet of the animal or its hair, its saddle or the load that is upon it, the bridle, the bell on its neck (although the animal has not moved from its place), title is given. And how does one acquire title by drawing? By calling it and it follows the voice, or by striking it with a stick and it runs from him: as soon as the animal has moved hand or foot, title is acquired. R. A'hi,

* Here in text are the well-known legends of Rabba b. b. Hana among the other Hagadah, which we find necessary to transfer to the end of this chapter.

and according to others R. A'ha, said: Not unless it has moved its whole body. Hence it is to be assumed that Rabh holds with the first Tana and Samuel with R. A'ha? Nay. Rabh may say: My decision is in accordance with R. A'ha's also, as R. A'ha speaks of a living body, which, even if it raised hand or foot, it remains still on its place without moving from it (and therefore he requires the moving of its whole body); but I speak of a boat, which, if one draws it a little, the entire body thereof is set in motion. And Samuel also may say: My decision can be also in accordance with the first Tana, who speaks of a living body which lifts its hand or foot, and usually it is to move the other one also; but concerning a boat, it is not considered a drawing unless he moves the entire boat.

Shall we assume that they differ in the same way as the Tanaim of the following Tosephtha do? To a boat, title is given by drawing. R. Nathan says: To a boat, and also to promissory notes, title is given by drawing, or by a bill of sale. And to the question: Where are promissory notes mentioned, so that R. Nathan's statement should apply? it was answered that the Tosephtha is not complete, and is to be read thus: To a boat, title is given by drawing, but to promissory notes by transferring. R. Nathan, however, maintains that to both title is given by drawing, as well as by a bill of sale.

But is, then, a bill of sale needed for a boat—is it not movable property, for which drawing is sufficient? It must then be said it was taught thus: To a boat, title is given by drawing, and to promissory notes by transferring. R. Nathan, however, says: To a boat by drawing, and to promissory notes by a bill of sale. And as R. Nathan's statement concerning a boat would be superfluous if his decision were the same as the first Tanaim, we must then say that they differ in the same way as Rabh and Samuel differ (*i.e.*, that R. Nathan requires that the whole body of the boat should be moved, while according to the first Tana a little drawing suffices)? Nay; both may agree with Rabh or with Samuel, and they do not differ at all concerning a boat. Wherein they differ is but as to promissory notes. Said R. Nathan to the first Tana (of the above Tosephtha): Concerning a boat I certainly agree with you, but concerning promissory notes I hold to my opinion that if there were a bill of sale the transferring gives title, but not otherwise. And they differ in the same point as the Tanaim of the following Boraitha do: To promissory notes title is given by transfer.

So is the decree of Rabbi. The sages, however, say: Title is not given by writing (as to all the debts contained in the promissory notes) unless the notes in question are transferred to the buyer, and the same is the case when the notes were transferred without a bill of sale: as to such things, both writing and transferring are needed.

Now let us see. The above Boraitha is explained in accordance with Rabbi. Let, then, the case of the boat also be explained in accordance with Rabbi, who holds that to a boat title is acquired by transfer, inasmuch as we have learned in the following Boraitha that such is the decree of Rabbi. But the sages say that title is not given unless he makes a drawing or he hires the place in which it is then placed? This presents no difficulty. Rabbi speaks of when the boat was placed on a public ground (as then drawing could not be made, because he must draw to a place which is under his control, which is not the case when it is in public ground; and the Boraitha speaks of when it was in a place where he could make a drawing to one under his control). Now we see that the Boraitha just cited speaks of a boat that was placed in public ground. How, then, is to be understood the latter part of it, which states: And the sages say title is not given unless the buyer makes a drawing? Now, if it was in public ground, from whom could the buyer hire the place so that a drawing should suffice? And aside from this, does, then, a drawing give title in public ground? Did not both Abayi and Rabha say: Transfer gives title in public ground, and also in a yard that does not belong to both (the seller and the buyer)? In a *semita* (path), however, or in a yard belonging to both, drawing gives title, and "lifting up" gives title everywhere? The expression "unless he makes a drawing" means that he shall move from the public ground to the *semita*, and the expression "unless he hires the place" is also to be explained as meaning that if it happens to be placed on premises belonging to one of them title is not given unless he hires the place.

Shall we assume that Abayi and Rabha both are in accordance with Rabbi (who holds that transferring suffices for a boat)? Said R. Ashi: If he should say: "Go make a hazakah and acquire title," then title would be given. Here, however, it is understood the seller told him, "Go make a drawing and acquire title." And the point of their differing is, one holds that the seller was particular with his words, that only by draw-

ing title should be given (but not otherwise), and the other holds that his expression is to be considered only as if he should show him the place where it is to be found (*i.e.*, "If you wish to make a drawing, here it is").

R. Papa said: If one sells a promissory note, he must write in the bill of sale, "Acquire title to it, and to all the debts it contains."

Said R. Ashi: I have explained the Halakha before R. Kahana and questioned him: How would it be if this were not inserted—would not title be given? Did, then, the buyer need it for the purpose of covering a glass with it (is it possible that a man should invest his money in a piece of paper that he cannot use but to cover something—must it not be assumed that he bought the debts which it contained)? And he answered: Yea! for this purpose he bought it. (And if the amount shows that it was double the value of the paper, then the sale would in any case be null and void, as exacting beyond a sixth makes the sale void.)

Amemar said: The Halakha prevails that to promissory notes title is given by transfer in accordance with Rabbi. Said R. Ashi to Amemar: Is your decision traditional or according to common sense? And he answered: Traditional. Rejoined R. Ashi: It is also according to common sense, as promissory notes are only words. (The note proper does not contain the debts or any money, but the promise of the borrower, which are words, and title cannot be given by words only.)

"*But not the entheca.*" What does this mean? It means the contents of the *entheca.*

MISHNA *II.*: If one sold a wagon, the bill of sale does not include the mules for it (when not hitched), and *vice versa.* If the yoke with the wagon were sold, the oxen when not hitched were not included, and *vice versa.* R. Jehudah, however, maintains: The amount paid may serve as evidence. How so? If one said: Sell to me your yoke for two hundred zuz, it is self-evident that he meant the whole team, as there is no yoke that could be worth two hundred zuz. The sages, however, say that such cannot be taken for evidence (as it may be he desires to make him a present without humiliating him).

GEMARA: R. Ta'hlipha b. Merba taught a Boraitha before R. Abuhu: If one has sold a wagon, the sale includes the mules. Said R. Abuhu: But our Mishna teaches that it does not. Rejoined the former: Then ignore my Boraitha. Said Abuhu: It

is not necessary, as it can be explained that your Boraitha speaks of when the mules were hitched to the wagon.

"*If one has sold the yoke,*" etc. Let us see how was the case? If people by the expression "yoke" mean the yoke without the cattle, then it is self-evident that he sold him the yoke only; and if the expression means "a team," then he certainly sold him the whole team? It speaks of a place in which some people by yoke mean the entire team, while others by this expression mean the yoke with harness, but not the cattle. According to R. Jehudah this can be ascertained from the amount; but the rabbis hold that the amount cannot be taken as evidence (as it is for the buyer to explain his desire plainly, as there are some who by yoke mean the wagon prepared for the oxen, not including them, and therefore the preference is given to the seller).

But even if the amount is not an evidence, let the sale be void if there was an exaction beyond a sixth of the value. And should you say that the rabbis do not hold to the theory that an exaction beyond a sixth makes void the sale but that they hold that the sale is valid, and the seller has only to return the amount which was overcharged, the answer is: This is not so, as we have learned in Middle Gate, Mishna, p. 132, that the rabbis hold this theory? Yea! They hold the theory only in a case where an exaction could be made (*i.e.*, in a sixth or more of the value); but in our case (two hundred zuz for the yoke only), where exaction cannot be made, it may be assumed that the buyer wishes to give a present to the seller (but does not wish to humiliate him, and so presents him the money for the yoke).

MISHNA *III.*: If one sells an ass, the harness is not included. Nahum the Modaite, however, maintains it is. Said R. Jehudah: At one time they may be sold, and at some other time they may not. How so? If the ass with its harness was before him, and the buyer says, "Sell me this ass," and the seller agrees, the harness is also sold; but if he says, "Is this your ass? sell it to me," then the harness is not included.

GEMARA: Said Ula: The first Tana and Nahum differ only in the sacks and *disacos* and *khumni*, as the first Tana holds that usually an ass is bought for riding (consequently the utensils that are not for this purpose are not included); but Nahum maintains that an ass is usually sold for carrying burdens, consequently the utensils for this purpose are included, as the saddle, sumpter-saddle, belt, and girdle.

An objection was raised from the following: "I sell you the ass with its harness": the saddle, the sumpter-saddle, the belt, and the girdle are sold, but not the sack, the *disacos*, nor the *khumni*, unless he said, "it and all pertaining to it"; then all is sold. We see, then, that only when he said, "the ass with its harness," the saddle, etc., are sold; but not, if he did not mention the harness? Nay; the same is the case even if he did not so mention, and the Boraitha comes to teach that the sack, etc., are not sold, even if he said, "the ass with its harness."

What does *khumni* mean? Said R. Papa b. Samuel: A saddle used by females only.

The schoolmen propounded a question: Does the Mishna treat of when the things mentioned above were upon the ass, so that, if they were not so, Nahum the Modaite would agree with the first Tana, or, on the contrary, does it treat of when the ass was not dressed in them, in which case the first Tana would agree with Nahum? Come and hear! If, however, he said, "it and all that is upon it," all is sold. And this is correct according to the supposition that they differ when the ass was dressed in these things, and the Boraitha is in accordance with the first Tana of our Mishna; but on the supposition that they differ when the ass was not dressed, according to whom would be the Boraitha? Nay; this cannot be taken for a support, as it may be that they differ even when the ass was not dressed, and the cited Boraitha is to be read: If he said, "the ass and all those things in my possession fit for its use."

Come, then, and hear what R. Jehudah says in our Mishna, and there is no doubt that he speaks of when the ass was dressed in them, as his expression "this ass" means all is sold. Is it not to be assumed that this was an answer to the first Tana (who said that even in such a case the things are not sold)? Nay! R. Jehudah was not answering, but taught a separate Halakha. Said Rabhina to R. Ashi: Did not R. Abuhu say, replying to R. Ta'hlipha (above, in the Gemara to the second Mishna): Explain your Boraitha, "When they were hitched," etc.? from which is to be inferred that the Mishna speaks of when they were not hitched; and when the second Mishna treats of them not hitched, it must be assumed that the third Mishna also speaks of the same case? On the contrary, take the first Mishna, which states, "not the slaves nor the *entheca*"; and to the question what does *entheca* mean, R. Papa answered: The

contents of the *entheca*. Hence the Mishna treats of when the load was upon it, from which is to be inferred that the second Mishna speaks also of when they were hitched (and this is not so). Therefore you cannot object or support from their teachings, as each Mishna speaks of a different case.

Abayi said: R. Eliezer, R. Simeon b. Gamaliel, R. Meir, R. Nathan, Symmachos, and Nahum the Modaite all hold that if one sells a thing the sale includes also all those things that are used with it—Eliezer, who said: If one sells a press-house, the treading-rod is included; Simeon b. Gamaliel, who said: If one sells a town, the *santer* is included; R. Meir, who said: If one sold a vineyard, all the vessels in use for the same are included; Nathan and Symmachos, who said above that the safety boats are included in the sale of the boat; and Nahum the Modaite with his statement in our Mishna.

"*R. Jehudah said,*" etc. What is the difference whether he said "this ass," or "is this your ass"? Said Rabha: If he said "this ass," he was sure that the ass belonged to him, and with the word "this" he meant the harness; but if he asked him, "Is this your ass?" he was not sure it was his. And he asked, if it was his, that he should sell it to him, meaning the ass only, without the harness.

MISHNA *IV.*: If one sold a she-ass, its foal is sold; but if a cow, the calf is not. If he sold the place where the manure is kept, the manure in it is sold therewith; a well, the water it contains is included; a beehive, the bees are included; a pigeon-coop, the doves it contains are included.

GEMARA: Let us see how was the case? If he said, "with its offspring," even if it is a cow why should the offspring then not be included; and if he did not say so, why should the offspring of an ass be included? Said R. Papa: It speaks of where he told him: I sell you a nursing ass, or a nursing cow. Of the latter the buyer can use the milk, but to what purpose did he say a nursing ass? We must assume that he means the nursing ass with its offspring.*

"*A well, the water it contains is sold.*" Said Rabha: Our Mishna is in accordance with an individual Tana of the following Boraitha (but the majority do not agree with him). If one sells a well, the water it contains is not included. R. Nathan, however, maintains it is.

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* The Hagadah here we also transfer to the end of the chapter, as it has nothing to do with this text.

MISHNA *V.*: If one buys the brood of a pigeon-coop (*e.g.*, if he buys in the month Nisan all the pigeons to be hatched during the whole year, but not the old ones, and usually each dove hatches two young ones every month, male and female, and those pigeons after two months hatch also, and so it is during the entire year, the month Adar excluded), he must leave the first pair of little ones with the parents. If one buys the brood of a beehive, he has to take the first three broods, after which the owner may make the bees impotent of propagation. If he buys the honey in combs, he must leave two with the beehive. If one buys olive trees for the purpose of cutting them down, he must leave the branches which are only two spans high for the seller.

GEMARA: But have we not learned in a Boraitha, concerning a pigeon-coop, that he must leave the first and second pair? Said R. Kahana: This presents no difficulty. The Mishna speaks of the old dove, and the Boraitha of both mother and daughter which have hatched—one pair for the old and one for the young mother. But why should not the pair left for the old mother suffice also for the young one, as she would not leave the pigeon-coop, because her mother and the pair remaining would bind her to stay there, even as the old dove is bound to the same? The old one is bound to both—to the young mother as well as to the pair left, while her daughter, as soon as she has hatched, has no longer anything to do with her mother, but is bound to her children.

"*Three broods*," etc. By what means does one make them impotent? Said R. Jehudah in the name of Samuel: By feeding them with mustard. In Palestine, however, it was said in the name of R. Jose b. Hanina: Not the mustard, but the honey which they consume after having eaten the harsh mustard, causes the impotency. R. Johanan said: He must not take the three broods at one time, but gradually, taking one and leaving one, etc.; and a Boraitha states that the first three he may take one after another, and after that he takes one and leaves one.*

"*Olive trees*," etc. The rabbis taught: If one buys a tree for the purpose of cutting it down, he must begin a span high from the ground; if it was an uninoculated sycamore, he must

* In the text there is a statement of R. Elazar repeated several times, which we leave for the forthcoming Tract Uktzin at the proper place.

leave three spans; and if a trunk of a sycamore, two spans. If sticks or vines, from the knots upwards. If date and cedar trees, he may take them with the roots, for if they were cut at the top they would not grow again.

Do we need three spans for an uninoculated sycamore? Have we not learned (Shebiith, IV. 5): One must not cut an uninoculated sycamore on a Sabbatical year, because it is considered a labor in a field? R. Jehudah said: One must not do it in the usual way, but higher than ten spans he may, or he may cut it at the level of the ground. Hence we see that it harms only if it is cut at the level of the ground, but not if a little higher than three spans. Said Abayi: If exactly three spans, it is beneficial for the growth of the tree, and at the level of the ground it surely harms it, but up to three spans it does neither good nor harm. Concerning a Sabbatical year, only what harms may be done; and concerning buying and selling, only things which are beneficial.

It is said that date and cedar trees one may take with the roots, because if cut at the top they will not improve. Has not R. Hyya b. Luliyni lectured that it is written [Ps. xxxii. 13]: "The righteous shall spring up like a palm tree, like a cedar," etc.? Why are both trees mentioned? If it mentioned the cedar only, one might say: As the cedar does not yield any products, so is the upright. Therefore it mentions the palm tree. And if the latter only were mentioned, one might say: As a palm tree does not improve after being cut off, so is the righteous. Therefore both are mentioned. Hence we see that a cedar does improve? This speaks of another kind of cedar which does so. As Rabba b. R. Huna said (Taanith, p. 75): There are ten different kinds of cedars.

MISHNA *VI.*: If one buy two trees within his neighbor's field, the ground beneath is not sold. R. Meir, however, maintains it is. If the branches were wide-spreading, the seller has no right to cut them off, though the shade of them harms his field. That which grows from the trunk belongs to the buyer, and that from the roots to the seller. If the trees die, the buyer has no right to the ground; however, if he bought three trees, the ground is included, and if the branches become wide-spreading, the owner of the ground may cut them off, and all that is growing from both trunks and roots belongs to the buyer; and if the trees die, he has the right to plant others.

GEMARA: There is a Mishna (Bikurim, I. 6): If one buy

two trees within his neighbor's ground, he may offer the firstfruit, but he must not read [Deut. xxvi. 10]: "The soil which thou hast given to *me*," as the earth is not *his*. R. Meir, however, said: He may offer and also read. Said R. Jehudah in the name of Samuel: According to R. Meir, one is obliged to offer the firstfruit, even if he bought it in the market. And whence has he inferred it? From the superfluous Mishna—*i.e.*, it is already said in our Mishna that he who buys even two trees has bought the ground therewith according to R. Meir. Why, then, was it necessary to repeat that in the cited Mishna? We must say that only to teach that, even if one does not possess any ground, he is nevertheless obliged to offer the firstfruit if he possesses such, even from the market (and the cited Mishna is to be explained thus: R. Meir said to the first Tana: Even if I should agree with you that the one who buys the two trees does not possess any ground, he is nevertheless obliged to offer the firstfruit). But is it not written [Deut. xxvi. 2]: "Which thou shalt bring in from *thy* land"? This is to exclude the land outside of Palestine. But is it not written [Ex. xxiii. 19]: "The first of the firstfruits of *thy* land shalt thou bring," etc.? This is to exclude the ground of a Gentile. But is it not written [Deut. ibid.]: "Which thou hast given *me*"? This means, "thou hast given me money to buy."

Rabba objected from the following: If one bought one tree within the trees of his neighbor, he may bring the firstfruit; but does not read, ". . . thou hast given," because he has no ground. So is the decree of R. Meir. Hence we see that if he has no ground he cannot read, "the earth thou hast given." This objection remains.

Said R. Simeon b. Elyakum to R. Elazar: On what reasons did R. Meir base his theory concerning one tree, and the rabbis theirs concerning two trees—that the men should bring the firstfruit and should not read? Does not the Scripture exclude him from bringing also? Said R. Elazar to him: Concerning a thing for which one previous master gave no reason you are questioning me in the college for the purpose of bringing me to shame? Said Rabba: I do not see any difficulty in it, as it may be assumed that the rabbis, as well as R. Meir, were doubtful as to the accuracy of the law: the rabbis could not absolutely decide that he who bought two trees had no ground, and R. Meir could not be certain concerning one tree, and therefore they decided he should bring, but not read.

But how can you say that R. Meir was doubtful—did he not plainly say above, because he has not acquired title to the ground? Read: "Perhaps he has not acquired title," etc. But according to both, why should the man in question bring? Suppose that, according to law, they are not considered firstfruit at all, and that he brings common fruits to the sanctuary, which is prohibited—*i.e.*, that he first sanctified them. But the fruit must be consumed by the priests, and if they are not considered firstfruit, they are consecrated for an offering or for another purpose, and it is prohibited that any one should derive benefit therefrom—*i.e.*, after he brings them, he redeems them. But even then, if they are not considered firstfruit, they are liable to separate "heave-offering and tithe"; and by bringing them he exempts them from these duties—*i.e.*, he previously separates the above from them. This can be correct concerning heave-offering, which belongs to the priest, and the same concerning "second tithe"; and also the "tithe for the poor" he may give to a poor priest, but to whom shall he give the first tithe that belongs to the Levite, as the Levite must not derive any benefit from consecrated things? This he may also give to the priest in accordance with R. Elazar b. Azaryha of the following Boraitha: Heave-offering must be given to the priest, first tithe to the Levite. So is the decree of R. Aqiba. R. Elazar b. Azaryha, however, maintains that even the first tithe may be given to the priest (after Ezra fined the Levites). But if they are considered firstfruit, the reading of the passages is obligatory? The obligation does not prevent the bringing. As R. Jose b. Hanina said elsewhere: If one has gathered the firstfruit, and sent it by a messenger who died while on the road, then the firstfruit may be brought into the sanctuary; but the passages should not be read, for it is written [Deut. xxvi. 2]: "Thou shalt take," and farther on, "Thou shalt go," etc., which means that the gathering as well as the bringing should be done by one person, and as the messenger is dead the reading cannot take place.

Said R. A'ha b. R. Ivya to R. Ashi: Let us see! The reading consists of passages from the Scripture, which are allowed to be read by every one and at any time. Let him then read, "And he answered": when he reads this with the bringing, it looks like a lie, which is not the case when he reads the Scripture.

R. Mesharshia b. R. Hyya said: The reason is that if the

reading were allowed, another, who has similar fruit, might think that such is really considered firstfruit, and will not separate the heave-offering therefrom.

"*If the branches were wide-spreading.*" What is to be considered trunk, and what roots? Said R. Johanan: All above the surface of the ground is considered trunk, and beneath roots. But suppose that an upheaval should occur that will cover the trunk so that the branches shall have the appearance of three trees, and then the buyer may claim: You sold me three trees, and I have a right to the ground. Therefore said R. Na'hman: The expression in the Mishna, "from the trunk belongs to the buyer," means as to cutting it down, but not to leaving it. And thus also said R. Johanan.

R. Na'hman said: We have a tradition that a date tree has no trunk. R. Zebid was about to explain R. Na'hman's statement by what our Mishna states, that if such a tree is cut on the top it does not further increase, and therefore the buyer cannot claim a right to the outgrowth of the trunk, as, the remainder of the tree being only for removal, he renounced his hope to derive any benefit therefrom. To which R. Papa opposed the statement in our Mishna that he who bought two trees which are also for removal has no right to the ground, and nevertheless he has a right to the outgrowth of the trunk? "Therefore," said he, "R. Na'hman means that it can never occur that trunks of date trees may bring forth outgrowths."

But does not the Mishna oppose R. Zebid's theory? He may say: The Mishna treats of a case in which the buyer bought the trees for the term of five years (*i.e.*, if it should happen that in the meantime they shall die, he has a right to plant others instead), and therefore he has a right also to the outgrowth of the trunks.

"*If he has bought trees,*" etc. To what extent of ground has he acquired title? Said R. Hyya b. Abba in the name of R. Johanan: He acquires title to the ground beneath the branches and that between them; and outside, to the extent that he may stand with his basket to gather the fruit from the outside branches. R. Elazar opposed: How is it possible that this should be granted to the buyer, when even a path through the field is not granted, as he has not any right to the ground which is outside of the trees?

Said R. Zera: From the teaching of our master (R. Elazar) we may learn that if he bought three trees he has no path, but

if he bought two trees he has, as he may claim: The trees are situated on your ground, and as you have sold me trees situated on your ground, so also have you granted me a path to them.

Said R. Na'hman b. Itz'hak to Rabha: Shall we assume that R. Elazar does not agree with his master Samuel, who said that the Halakha prevails in accordance with R. Aqiba, who holds that usually the seller sells with a good eye (and according to this theory, if he sold him three trees he granted him also a path to them). And he answered: Our Mishna cannot be in accordance with R. Aqiba, as it states that when the branches are wide-spreading the seller has the right to clear them, and in accordance with R. Aqiba, this right could not be given to him, for the supposition is that he sold them with a good eye. Rejoined R. Na'hman: We have heard R. Aqiba saying so only concerning a well, etc., which does not impoverish the ground; but have you heard him saying so concerning a tree, which does? Does not R. Aqiba agree that, in a case in which the branches of a tree overhang the field of another, he may clear the size of a plough handle?

There is a Boraitha in accordance with R. Hyya b. Aba that the buyer of three trees acquires title to the ground beneath, between, and outside to the extent that he can stand there with a basket in the hand. Said Abayi to R. Joseph: Who has a right to sow the outside ground that belongs to the buyer (the buyer of the trees, to whom it belongs, or the owner of the ground, who allows the buyer to be present there only at the time of gathering—therefore he may sow it, and the buyer has a right to step on it at that time)? And he answered: This we have learned in the Mishna farther on, that the outsider may sow the path which leads to the inside field. Rejoined Abayi: What comparison is this? There the buyer of the inner field does not suffer any damage when he steps on the sown path to his field; but here, if the owner of the ground should sow it, there is a damage to the buyer of the trees in not having the products of the ground belonging to him. Therefore if this case should be compared to the one in the cited Mishna, it is only to the latter part, which states that neither of them has a right to sow. There is a Boraitha in accordance with Abayi, which states plainly that neither of them has a right to sow.

How much space is to be left between the trees in question, that it should be considered the buyer's? R. Joseph in the name of R. Jehudah, quoting Samuel, said: From four to eight

ells. And Rabha in the name of R. Na'hman, quoting Samuel, said: From eight to sixteen. Said Abayi to R. Joseph: Do not quarrel with R. Na'hman, as there is a Mishna (Kilaim, IV. 9) in accordance with him: If one has planted his vineyard sixteen ells square, he may sow other seeds between the rows. And R. Jehudah said: It happened in the city of Zalmon that one had planted his vineyard sixteen ells square. One year he trained the branches of every two rows in one direction, and sowed in the opposite direction; and the next year he trained the branches in another direction, and sowed on the ground that had lain fallow. And when the matter was brought before the sages, they sanctioned it [his manner of proceeding]. And he answered: I took my theory from such a case as happened in the village of the shepherds, which was brought before R. Jehudah, and he decided to give them space for a yoke of oxen with the harness thereof; but I did not know the measure of such a space, and after I had given my attention to a Mishna stated above, as follows: "One must not plant a tree near his neighbor's field unless he leaves four ells space," and a Boraitha in addition to this states the four ells mentioned are for the purpose of working up a vineyard (as explained above, p. 78), I inferred from this that the measure of a yoke with the harness is four ells. But is there not a Mishna (Kilaim, IV. 9) in accordance with R. Joseph: Beth R. Meir and R. Simeon say: If one plants his vineyard eight ells square, he is permitted to sow other seeds therein? Yea; nevertheless, a practised act is more important for evidence.

It is correct in accordance with R. Joseph, which is according to R. Simeon's theory, as we have heard that R. Simeon's theory equals both cases, when the vines are scattered and also when they are growing together—"scattered," from the Mishna just cited, and "growing together," from the following Mishna: A vineyard which is planted in less than four ells is not to be considered a vineyard at all. So is the decree of R. Simeon, etc. But according to R. Na'hman, who is in accord with the rabbis' theory, we have heard their opinion concerning scattered ones (as said above in the case of Zalmon); but have you also heard their opinion about growing together? This is common sense. As R. Simeon considers the half space in his theory of growing together, the same is the case with the rabbis: they also consider the half space in their theory of growing together.

Said Rabha: The Halakha prevails—from four to sixteen

ells; and there is a Boraitha which supports him as follows: What is meant by being near one to another? Four ells. And what is meant by being far? Sixteen ells. In the latter case, if one bought the trees he bought also the ground, and also the shrubs between; and, therefore, if it happens that a tree withers or is cut off, the ground remains his. If, however, it were less or more than the above space, or he bought the trees not at one time, but one after another, the ground and the shrubs between do not belong to him; and, therefore, if a tree becomes withered or is cut off, he has no right to the ground (to plant another instead).

R. Jeremiah questioned: How should the ground belonging to the buyer be measured—from the end of the branches or from the trunk (so that he would have more space than by measuring from the branches)? And R. Gibiahh from the city of Khthil said to R. Ashi: Come and hear the following Mishna [Kilaim, VII. 1]: If a vine has been bent in such a manner that the main stem is out of sight [underground], the measure [as to legal distance] must be calculated from the second stem—*i.e.*, the place where it rises from the ground and again becomes visible. R. Jeremiah questioned again: How is the law if one has sold a tree of which the branches are separated by four ells from one another: And the above R. Gibiahh said to R. Ashi: Come and hear the second Mishna [ibid., ibid.]: If three vines are bent [and partly covered with mould] and their stems remain visible, R. Elazar ben Zadok said: If there remain between them not less than four and not exceeding five ells in width, they [the vines] must be looked upon as connected; otherwise, they are not to be so considered.

R. Papa questioned: If one has sold two trees situated in his field and one on the boundary, are they to be counted together, or not? The same question arises when one has sold two situated on his own ground and one on his neighbor's, and both questions remain undecided. R. Ashi questioned: (If in the above questions it were decided that they should be counted together,) how is the law if there were a well, or a channel, or intervention by a public ground or a row of young trees? This question also remains undecided.

Hillel questioned Rabbi: If a cedar tree intervened, how is the law? And he answered: Then title is given to him in the trees, as well as in the cedar. How should the trees be situated so that the sixteen ells in question should be measured? Ac-

cording to Rabh in a row (. . .) and according to Samuel diagonally (· . ·); and the difference is, that according to him who said "in a row" the ground belongs to the buyer, so much the more when they are situated diagonally; while according to him who says "diagonally," if they are in a row the ground does not belong to the buyer, as if in a row the ground between is fit for sowing. R. Hamnuna opposed: According to the theory that if they were placed diagonally the ground belongs to the buyer only for the reason that such a ground is not fit for sowing, how would it be if one should sell three thorns which are called *Higi Runiitha*, the ground between which is also unfit for sowing—shall we also assume that the ground belongs to him? And he was answered that the thorns in question are of little value, which is not the case with the trees in question (and the law dictates both that the trees should be of value and the ground between unfit for sowing).

MISHNA *VII.*: If one sold the head of a cow, the feet are not included, and *vice versa;* the windpipe, the liver is not included, and *vice versa*. However, concerning a calf, the feet are included in the sale of a head, and *vice versa;* and the same is the case with the windpipe and the liver.

There are four legal customs concerning sales: If one alleges having sold good wheat and thereafter it was found to be bad, the buyer may retract; if he alleged having sold bad and thereafter it was found good, the seller may retract. If, however, it was found as alleged, neither of them can retract (although from the sale of the wheat to the delivery the price for same has increased or decreased). If one sold dark red wheat and it was found to be white, or *vice versa;* trees of olives, and they were found to be sycamore, or *vice versa;* wine, if it was found to be vinegar, or *vice versa*—both have a right to retract.

GEMARA: Said R. Hisda: If one has sold wheat worth five zuz for six, and subsequently it increases to eight, who was imposed on prior to the increase? The buyer. Therefore the right of retraction from the sale is given to him only, but not to the seller, as the buyer may say: If you had not imposed on me in the beginning, you could not retract from the sale even if the price increased, and having imposed on me, should you have the right to retract? And it was learned in our Mishna that if one alleged having sold good and it was found bad, the right of retraction was given to the buyer and not to the seller, even if it had increased in price more than the seller took.

The same said again: If one has sold for five the value of six, and thereafter it lowered to three zuz, who was imposed on prior to that decrease? The seller. The right to retract is only for him and not for the buyer, for the reason stated above, that the seller may say to the buyer: If I had not been imposed on in the beginning, you could not retract though the price should decrease, and inasmuch as I have been imposed on, should you have such a right? And so teaches our Mishna: If one alleges having sold bad, and thereafter good was found, the right of retraction is given to the seller and not to the buyer.

But what then came R. Hisda to teach? Does not the Mishna state so? Without his statement, one might say that according to the Mishna, in those cases illustrated by R. Hisda, both have a right to retract, as there was imposition in the beginning of the sale (while the Mishna treats of where no imposition took place), and therefore R. Hisda came to teach us that the Mishna must be interpreted according to his illustration.

"*Wine, and it was found vinegar.*" Shall we assume that our Mishna is in accordance with Rabbi, and not with the rabbis of the following Boraitha? Wine and vinegar are considered one kind, concerning heave-offering (so that if he has separated *troomah* from the wine for the vinegar also, or *vice versa*, it is valid). Rabbi, however, maintains that it is not, because they are two separate kinds? Nay! Our Mishna may be in accordance with the rabbis also, as they differ with Rabbi only concerning tithe and heave-offering, and it is in accordance with R. Ilaha, who has inferred elsewhere from the Scripture that if one has separated tithe or *troomah* from the bad, for the good ones of the same kind (grain or fruit), his action is valid; but concerning selling and buying the rabbis also agree that the one who desires wine cannot be satisfied with vinegar, and *vice versa.*

MISHNA *VIII.*: If one has sold fruit, and the buyer has made a drawing on it, although it was not as yet measured, title is given, but not if it was measured for him, and the drawing has not taken place; and if the buyer were shrewd, he would hire the place where the fruit is to be measured, so that the seller should not have the right to retract even before the drawing is made.

If one buys flax, title is not given unless he removes it from one place to another; but if the flax was still attached to the ground, and the buyer pulled up some of it, title is given.

GEMARA: Said R. Assi in the name of R. Johanan: If he

has measured it, and placed it on the *semita* (path) for the buyer, title is given. Said R. Zera to him: Perhaps the master has heard from R. Johanan that he has measured and put it in the basket of the buyer. And he answered: The question of this scholar is similar to that of men who do not understand a Halakha at all, for is it then needed to teach that title is given if the seller puts it in the basket of the buyer?

(Says the Gemara:) Has R. Zera accepted R. Assi's theory, or not? Come and hear! R. Yanai said in the name of Rabbi: If the yard where the fruit was placed belonged to both the seller and buyer, title is given to the latter.

Is it not assumed that title is given even if it was placed on the ground of the yard? Nay; it means if it was placed in the basket of the buyer; and it seems to be so, as R. Jacob in the name of R. Johanan said: If after measuring he puts it on the *semita*, title is not given. And as this would contradict the above statement of R. Assi in the name of R. Johanan, we must then say that one has heard from him when the basket of the buyer was placed on the *semita*, and from the other, when the basket of the buyer was not. Infer from this that R. Zera had not accepted. Come and hear another objection! But when measured, and a drawing was not made, title is not given. Does this not mean in the *semita?* Nay; it means "public ground." If so, how is the first part to be understood: "If he has made a drawing, but not measured, title is given." Does, then, a drawing give title in public ground? Is it not said above, p. 169, that in public ground only transferring gives title, but not drawing? The expression "drawing" means that he removed it from the public ground to the *semita*. But how about the latter part: "If the buyer is shrewd, he hires the place," etc.? If it speaks of a public ground, from whom can he hire it? It means to say, if it still remained on the premises of the owner, then if the buyer is shrewd he will hire the place.

Both Rabh and Samuel said: The vessels of the buyer give title to him in every place, except on public ground. R. Johanan and R. Simeon b. Lakish both are of the opinion that it gives title even when on public ground. Said R. Papa: The above parties do not differ, as the latter speaks of a *semita;* and why they call it public ground is because it is not private ground. (Says the Gemara:) It seems to be so, as R. Abuhu said in the name of R. Johanan: The vessels of one give him

title in every place where it is permitted to him to place them. Hence we see that only to those places where it is permitted to him to place them is title given, but not to public ground where one is not permitted to place one's vessels. Come and hear the following Tosephtha: There are four legal customs concerning sellers: (*a*) If the measure does not belong to both of them and it was placed on public ground, or in a yard that does not belong to both, then, if the measure was not as yet filled up and the seller wishes for some reason to recede from his sale, he may do so; but if it was filled up, then it is considered already the buyer's (as it is supposed that for this purpose it was lent to the buyer, that as soon as filled he might take it with its contents); (*b*) if the measure belongs to one of them, to every atom that is put in the measure the owner of the measure acquires title, provided it was at those places named above; (*c*) if it was on the premises of the seller, the buyer does not acquire title unless he lifts it up or removes it from the seller's premises; and (*d*) if it was on the premises of the buyer, as soon as the seller agreed to sell him the grain for such and such a price the buyer has acquired title. If, however, the grain in question was deposited previously by the seller without the intention of selling it, and thereafter the depositary bought it from him, title is not given unless the seller agrees to renounce his right to the place where the grain is now placed, or the buyer hires it. We see, then, that if the measure was filled up title is given to the buyer, even if it was on the public ground? Also, here, by public ground is meant a *semita;* but if so, why the repetition, "a yard that does not belong to both"? Is it not the same as a *semita?* By this expression is also meant that the whole yard does not belong to one of them, as they were partners in it.

R. Shesheth questioned R. Huna: If the vessels of the buyer were placed on the premises of the seller, does the buyer acquire title or not? And he answered: This we have learned (Githin, I. 1): "If he put the divorce in the pocket of her dress or in her basket, she is divorced" (hence we see that one's vessels give him title). Said R. Na'hman to R. Huna: Why have you decided this question from that Mishna which was objected to, and there were about a hundred explanations of the meaning of it (*q.v.*)? You should decide this from the Tosephtha cited above: If it was on the premises of the seller, title is not given unless he lifts it up, or removes it; and it is to be assumed that it speaks of when the measure was the buyer's. (Answered he:)

Nay; it means if the vessels belong to the seller. (Rejoined he:) If the first part speaks of when the vessels belong to the seller, the second part must also treat of the same. How, then, is the decision to be understood: "If it was on the premises of the buyer, as soon as the seller has agreed," etc., title is acquired? Why, then, is it not still in the hands of the seller? Nay; the latter part speaks of when the vessels belong to the buyer. But what compels you to explain the two parts of it in different applications? Because, generally, if on the premises of the seller his measures are used, and on the premises of the buyer his are used.

Said Rabha: Come and hear another objection: If the buyer or his servants have led the asses of the seller, with the load, to his premises (and the load was still upon the asses or in the hand of the servants), whether the price was made but no measure taken, or measure taken but no price made, both have a right to retract. If, however, they were unloaded in the street and one brought the stuff to his house, if the price was made before measuring neither of them can retract; but if measured before the price was made, the sale is not considered settled, and both may retract. Now, as we see that the vessels belonging to the seller, if they are on the premises of the buyer, do not give title, it must be the same with the vessels of the buyer on the premises of the seller—neither do they give title? Said R. Na'hman b. Itz'hak, it speaks of when the buyer removed it from the vessels and placed it on his premises. Rabha became angry at this explanation: Does not the Tosephtha plainly teach "unloaded," and he says, "removed it and placed it on his premises"? Said Mar b. R. Ashi: It can be explained that the load was of bundles of garlic of which the unloading itself makes it rest on the premises of the buyer, and it needs no more work. Said Huna b. Mar Zutra to Rabhina: Let us see. It states "unloaded" (from which it must be supposed that he did it with the consent of the owner). What, then, is the difference whether the price was made or not? (Is it not said above that if on the premises of the buyer, as soon as agreed on, no retraction can take place, as the premises of the buyer give title?) Why, then, should a retraction take place in such a case? And he answered: If the price was made, the seller relies upon it, and the sale is made; but if otherwise, he does not. Said Rabhina to R. Ashi: Come and hear what both Rabh and Samuel declared above: The vessels of one give him title at *every*

place. Is this not equivalent to saying even on the premises of the seller? Yea, provided he told him: Go and acquire title.

There is a Mishna (Kidushin): To real estate title is acquired by money, deed, or hazakah, and to personal property title is given by drawing only. As to which in Surah it was taught in the name of R. Hisda, and in Pumbeditha in the name of R. Kahana, according to others in the name of Rabha, as follows: This is said concerning things which it is not usual to lift up; but to those which it is usual to lift, title is given only by lifting up, but not by drawing.

Abayi was sitting repeating this Halakha, and R. Ada b. Mathna objected to him from the following: If one steals a purse on Sabbath and takes it into the street, he is obliged to pay for the purse, because he was culpable of stealing before the violation of the Sabbath was committed. (There is a rule that if in one and the same thing a liability for money and a crime were committed, the punishment for the crime absolves him from payment.) In such a case, however, two separate crimes are considered, as after he steals the purse it becomes his (and the violation of the Sabbath is done with his own). If, however, he drew the purse little by little, and he picked it up when it was already on public ground, he is absolved from payment, as both crimes were committed together. Now a purse is certainly a thing which is usually lifted up, and nevertheless one acquires title to it by drawing; for should it not be Sabbath, he would be obliged to pay for it, even if he should not have lifted it up until it reaches the street? And he answered: It speaks of a purse fastened with a cord, of which drawing is usual. Said R. Ada: I also speak of such a kind of purse. And he rejoined: I mean such a big purse as could not be lifted up except by drawing it by the cord. It was objected again from the above Tosephtha that if on the premises of the seller, title is not given unless he lifted it up or drew it, from which we see that to a thing that can be lifted up title is acquired by drawing also. Said R. Na'hman b. Itz'hak: It is meant in parts. To a thing which is usually lifted up, title is given by lifting, and usually drawn, by drawing.

Come and hear! If one sold fruit, if he made a drawing although not measured, title is given. Now fruit is usually carried, and nevertheless drawing suffices? It means big loads of fruit. If so, how is the latter part to be understood: "If one buys flax, title is not given unless he removes it to another

place" ? Is it not usual for flax to be in big loads ? With flax it is different, because it is usually detachable in big loads.

Said Rabhina to R. Ashi: Come and hear! To a cow, title is given by transferring; and to a calf, by lifting up. So is the decree of R. Meir and R. Simeon b. Elazar. But the sages say: To a calf, by drawing also. Now a calf can be lifted up, and nevertheless drawing gives title ? With a calf it is different, as it resists. Therefore it is difficult to lift it up.

Rabh and Samuel both said: If one says: I sell you a kur of thirty saahs for such an amount, the seller has a right to retract even at the last saah. If, however, he said: I sell you a kur of thirty saahs, each saah for a selah, title is acquired to every saah as measured. Come and hear! If the measure belongs to one of them, to every atom that was put in title is acquired, although the whole measure was not as yet filled. Hence we see that title is given even when one did not say: I sell you each measure for a certain price ? It speaks of when in the measure were marks, as where one said: I sell you a hin for twelve selahs, each lug for a selah. And R. Kahana illustrates thus: There were marks in the hin for one, two, three lugs, etc. The same is it with the measure in question: there were marks for each saah. Come and hear! If one hires a servant to work for him in the barn (not in harvest-time) for one dinar a day, with the stipulation that he shall work for him for the same price in the harvest-time, although at that time the price is a selah a day (and advances him the wages for the whole time), it is prohibited to do so, as it looks usurious; but if he hires him for one hundred days from to-day for a dinar a day, and advances him one hundred dinars, although during the time the harvest begins and each day is worth a selah, it is permissible. Now, if you say that to a kur of thirty saahs, each saah for a selah, title is given for each saah measured, it ought to be the same with the days in question—for each working day a dinar shall be charged, and when the harvest comes he shall add every day for the increase in price at that time, and by not doing so it is to be considered usury ? Said Rabha: Whence did you obtain that it is not permissible to one to lower the price for his work ? Hence this does not contradict the statement of Rabh and Samuel at all. But if so, why is there a difference between the first part of the Boraitha and the latter ? In the first part it does not say: Work from to-day. And if he begins his work at the harvest-time for a lower price, it looks usurious, as he has

lowered the price for advancing the money. In the second part, however, where he begins to work immediately, and works every day for the same price, it cannot be considered usury if he does not increase the price at harvest-time.

"*And the buyer pulled up some of it*," etc. Because he pulled up some of it, he acquires title to the whole? Said R. Shesheth: It treats of a case in which the seller said to him: Fix something in the ground, and acquire title to all that is attached thereon.

MISHNA *IX.*: If one sold wine or oil, and it became dearer or cheaper, if before the measure was filled it is to be charged to the seller; and if afterwards, to the buyer. If the sale was made through a broker, and it happens that a barrel leaks, it is to be charged to the broker, and the seller is obliged to add a few drops to the measure. After the seller has turned over the measure, and some of the liquid has gathered, it belongs to the seller; the storekeeper, however, is not obliged to keep the measure until the last three drops are leaked out. R. Jehudah says that on the eve of Sabbath, when it grows dark, one is exempt from this duty.

GEMARA: Let us see to whom the measure in question belongs? If to the buyer, why should it be charged to the seller, even if it was not filled; and if to the seller, why should it be charged to the buyer, even if it was filled up? Said R. Ilaah: It speaks of when the measure was the broker's. But does not the Mishna state in the latter part, "if there was a broker," from which it is to be inferred that the first part means without a broker? The first part speaks of the broker's measure in his absence; and the latter, in his presence.

"*After the seller has turned over the measure*," etc. When R. Elazar reached Palestine, he met Zeeri and asked him: Is there here some scholar whom Rabh has taught the laws about measures? And he showed to him R. Itz'hak b. Abdimi. And he asked him: What is your difficulty? The statement of our Mishna, which says that this belongs to the seller, and another: If, of *troomah* which was given to the priest, after the barrel was turned over and leaked out there was still some remainder, it is *troomah* (hence we see that it belongs to the buyer)? And he answered: This presents no difficulty, as additional to our Mishna was taught by R. Abuhu: The reason is that usually the seller renounced his right to such a trifle (which cannot be said there, as who can renounce *troomah?*).

"*The storekeeper*," etc. The schoolmen propounded a ques-

tion: Does R. Jehudah with his statement mean to say that the wholesaler is exempt from adding the drops on the eve of Sabbaths, therefore being more lenient than the first Tana, or does he mean the storekeeper, and is rigorous, as he exempts him on the eve of Sabbaths and not on week-days? Come and hear the following Boraitha, which states plainly: R. Jehudah said on the eve of Sabbaths the storekeeper is exempt, for he is then busy.

MISHNA *X.*: If one sends his little son to the storekeeper with a *pundiun* (dupondius) to buy one issar's worth of oil and to get one issar change, and the storekeeper so acts, but the child loses the issar and breaks the glass containing the oil, the storekeeper is responsible. R. Jehudah, however, frees him, as for this purpose the child was sent. The sages, however, admit that when the glass was in the hand of the child and the storekeeper poured the oil into it, the storekeeper is free.

GEMARA: It is correct, in their difference concerning the oil and the change of the issar, that according to the rabbis the child was sent only to notify the storekeeper of his want, so that the storekeeper shall supply it, and according to R. Jehudah that it was sent to bring it; but why should the storekeeper be responsible for the *glass*, which the father should not have intrusted to the child, who was unable to take care of it? Said R. Houshiah: The Mishna treats of when the sender was a glass-dealer, and the storekeeper took it to examine it and it broke. And it is in accordance with Samuel, who said elsewhere that if one takes a vessel to a specialist for examination, and it was destroyed by an accident, the latter is responsible. Is it to be assumed that in this simple statement of Samuel the Tanaim differ? Therefore said both Rabba and R. Joseph: It treats of when the storekeeper was a glass-dealer also, and *he* gave the glass to the child; and R. Jehudah's decision that the sender is nevertheless responsible for the glass also is because it was sent for the purpose of bringing the oil (and as the father gave no vessel, the storekeeper did only what was demanded); and the rabbis are in accordance with their theory that the storekeeper had to supply. But if so, how is the latter part, "If the glass was in the hand of the child," etc., to be understood? Is it not said that the child was sent only to notify him? Therefore Abayi and R. Hanina, sons of Abin, both said: The Mishna speaks of a case in which the storekeeper took the glass to measure with (and although the storekeeper

had not requested that such should be sent to him, as soon as he took it for the purpose of measuring he is responsible). And this is in accordance with Rabba, who said (Middle Gate, p. 69): "If he has struck the animal, although he was not obliged to return it, he is responsible. But Rabba's statement was concerning a living thing, which usually runs away when struck. Have you also heard him stating in such a case as ours? Therefore said Rabha: I and the lion of our society, which is R. Zera, have explained thus: The Mishna treats of when the storekeeper took the glass for measuring to other customers—and the point of their differing is, "a borrower without consent." According to one, he is considered a robber and is responsible; and according to the other, he is considered a borrower who is not responsible for an accident.

The text says: Samuel said: "If one took a vessel from a specialist, to examine it, he is responsible for an accident." This is only when the price of the article was fixed.

There was a man who entered a butcher shop and lifted up a shoulder of meat, and while examining it a crusher came and took it away from him; and when the case came before R. Ziemar, he made him responsible, as the price for it was already made.

There was a man who brought cucumbers to the city of Pumnahara, and a crowd arriving, each of them took one for the purpose of buying, but the seller could not see of whom to demand the money. And he exclaimed, "All of them are consecrated for heaven." When the case came before R. Kahana, he decided that one cannot consecrate a thing not belonging to him (and as the price for each cucumber was fixed and they were in the hands of the buyers, they had acquired title to them even before paying; but if the price were not fixed, they would be still under the control of the owner and the consecration valid).

The rabbis taught: If one were examining herbs in the market, selecting from them and putting the same aside, even if he did so the whole day title is not acquired, and there is no obligation for tithe. (It treats of when the seller was one of the common people who was suspicious that he did not separate tithe therefrom.) If, however, he had made up his mind to buy, title is acquired, and they become a subject for tithe. In case of reconsidering he has no right to return, because they are already a subject obligatory for tithe; and also he has no right to separate the tithe if he intended to return, as he would dimin-

ish the value. Therefore he can do no other than separate the tithe and pay the owner for them.

But is it so, that because one has made up his mind to buy he acquires title and makes a thing subject for tithe? Said R. Houshiah: The Boraitha treats of one who fears heaven like R. Saphra, who always acted as it is written [Ps. xv. 2]: "And speaketh the truth in his heart."

MISHNA *XI.*: The wholesaler has to clean his measures once within thirty days (because the stuff sticks to them and impairs accurate measuring). A retailer, however, has to do so once within twelve months. R. Simeon b. Gamaliel, however, maintains that the reverse is the case. (With the wholesaler, who measures continually, the stuff does not stick, and it is sufficient to clean them once within a year; but with the retailer, who does not measure continually, the stuff sticks, and he is obliged to clean them once within thirty days.) The storekeeper must do the same with his measures twice a week, and the weights once a week (as he takes hold of them with wet hands, and consequently they become heavier, and when he buys something, in weighing the stuff he deceives the seller). The scales, however, he must clean before each weighing thereon. Said R. Simeon b. Gamaliel: All this is said when he sells liquids, but otherwise it is not necessary. The storekeeper is obliged to bend the cross-bit the size of a span to the scale that contains the stuff sold (in case he sells a *litra* or more). If, however, he weighs strictly, he must give him the overweight due—one-tenth of a liquid and one-twentieth of a dry thing. Where it is customary to measure with small measures, one must not do it with large ones, and *vice versa*. Where it is customary to smooth the measures, it must not be heaped; and to heap, it must not be smoothed.

GEMARA: Whence is all this deduced? Said Resh Lakish: From [Deut. xxv. 15] "A perfect and just weight shalt thou have"; and as the word "just" is superfluous, it is to be explained thus: Justify the perfect measure from thy own. If so, how is the latter part, "if he weighs strictly," to be understood? (If it is a biblical obligation to add to the exact weight, how can it be allowed to weigh strictly?) Therefore it must be said that the first part of the Mishna treats of places where it is so customary, and the interpretation of Resh Lakish refers to the latter part, which states that he must give him the overweight. And to the question, Whence is this deduced? Resh

Lakish interpreted the above-cited verse. And how much shall the overweight be? Said R. Abba b. Mamal in the name of Rabh: A tenth of a *litra* in liquid to a quantity of ten *litras*.

"*One-tenth to liquid*," etc. The schoolmen propounded a question: Does it mean one-tenth of a liquid to ten wet measures and one-twentieth to twenty dry measures, or one-tenth to ten liquid and to twenty dry ones? This question was not decided.

R. Levi said: The punishment for false measuring is harder than for adultery, as concerning the first the expression in Scripture is [Lev. xviii. 24], "with *all*," and the latter [Deut. xxv. 16], "with *iele*." And whence is it inferred that these words mean hard punishment? From [Ezek. xvii. 13]: "But the mighty (*iele*) did he take away."

And what is the reason? Concerning adultery one can atone by repentance, which is not the case with an unjust measure, as he cannot know whom he has cheated, in order to make amends.

The same said again: It is harder for the cheating of a commoner than for the cheating of the sanctuary, as the punishment for robbing a common man is more severe than for robbing the sanctuary.* Concerning a commoner it is written [Lev. v. 21]: "If any person sin and commit a trespass against the Lord —if, namely, he lie unto his neighbor . . . in a thing taken away," etc. Hence even in the beginning of the deception the passage calls him sinner, while concerning the robbing of the sanctuary [ibid., ibid. xiv. 15], "If any person commit a trespass," etc., he is not called sinner at the time he took it, unless he derived benefit therefrom.

The rabbis taught: Whence is it deduced that it must not be smoothed where the custom is heaping, and *vice versa?* From [Deut. xxv. 15]: "A perfect and just measure shalt thou have." And whence is it deduced that if one say, where the custom is not to smooth, "I will smooth and diminish the amount," or, in places where it is smoothed, "I will heap and increase the amount," he must not be listened to? From the same cited verse and from the superfluous word "just," as stated above.

The rabbis taught: Whence is it deduced that one must not weigh accurately where it is customary to add to the weight, and *vice versa?* From the same cited verse: "perfect and just

* The Hagadah in text will be placed at the end of this chapter.

weight." And if one cared to do otherwise than according to custom, and pay the difference? He must not be listened to, as said above.

Said R. Jehudah of Sura: It is written [ibid., ibid. 14]: "Thou shalt not have in thy house," etc. (the term "in thy house," which is superfluous, is to be interpreted thus: thou shalt not have money in thy house, for the purpose of smoothing where it is the custom of heaping, and *vice versa*, or for overweight, etc.), because this would bring one to keep in his house two divers measures. And the same explanation is to be given to [ibid., ibid. 13]: "As it is desired of every one to have one weight and one measure, just and perfect."

The rabbis taught: From the same verse is to be inferred that *gradums* must be appointed to investigate measures, but not to investigate prices. The Exilarchs used to appoint gradums for both (measures and prices). And Samuel said to Karna: Go and lecture to them that gradums should be appointed for measures only. He, however, lectured that for *both* (measures and prices) gradums must be appointed. And Samuel cursed him for this. However, Karna did it in accordance with Rami b. Hama, who said in the name of R. Itz'hak: Gradums should be appointed for measures as well as for prices, because of cheating.

The rabbis taught: If one desires a *litra*, a half, or a quarter, it may be given to him with its weight, but for less than this no weight should be made; but he may give it to him according to the money or by weight of coins.

The rabbis taught: If one desires three-quarters of a *litra*, he has no right to demand one shall weigh him each quarter separately (and give him overweight to each of them); but one may weigh him a *litra*, and leave the fourth quarter for overweight. The same is the case if he needs ten *litras:* he has no right to demand he shall weigh him each *litra* separately with an overweight; but he weighs him all the ten in one scale, and gives one overweight to all.

The rabbis taught: The scales must be hanging three spans in the air—*i.e.*, three spans from the ceiling or three spans from the ground; and the cross-bit with the cords of the scales must be the size of twelve spans; for wool and glassware two spans, and the cross-bit with cords of the scale nine spans; the storekeeper and privates, however, one span, and the cross-bit with cords of the scale six spans; and for gold and silver three fingers

in the air, and of the cross-bit and the cord of the scales I do not know the size (the Tana of this Boraitha says so).

(Says the Gemara:) For what purpose is the first-mentioned scale of which it is not stated what should be weighed upon it? Said R. Papa: For *gravita* (of iron and copper smiths, who weigh pieces of one hundred *litras* on one scale; according to others, their filings).

Said R. Mani b. Patish: The same sizes of scales are needed to make a subject for defilement (this will be explained in the proper place).

The rabbis taught:. Weights must not be made of tin, lead, cassiterite, or other kinds of metal, but they may be made of granite or glass.

The rabbis taught: The roller for smoothing must not be made from a melon stem, as it is too light; nor of iron, as it is too heavy; but of olive, nut, sycamore, or box tree.

The rabbis taught: The roller must not be made thick at one end and narrow at the other; one must not strike rapidly, because this would be a benefit for the buyer and a disadvantage to the seller; and also not too slow, which is a disadvantage to the buyer and beneficial to the seller. And to all this was said by Rabban Johanan b. Zakkai: It would be painful to me to declare the art of measuring, as this would serve as a lesson for swindlers, and also painful not to declare it, as swindlers would say that the rabbis have no idea of the art of our profession.

And to the question of the schoolmen: Did R. Johanan declare so, or not? said R. Samuel b. R. Itz'hak: He did; and on the basis of the following verse [Hos. xv. 10]: "For righteous are the ways of the Lord, and the just shall walk in them, but the transgressors will stumble through them."*

Said R. Jehudah in the name of Rabh: One must not keep in his house an unjust measure, even if he uses it for a chamber. Said R. Papa: This is said of places where measures are not stamped; but in places where they are it does not matter, for no one would take a measure without being stamped. And even where they are not stamped, it is prohibited to keep them when they are not examined by the government; but if they are, it does not matter.

(Says the Gemara:) In reality, however, it is not so, as it

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* Here is repeated matter in pp. 147–148 of Vol. XII. to "Rabha said."

may happen that one may measure with it by twilight. And so also we have learned in a Boraitha: One must not keep in his house an unjust measure, even if he uses it for a chamber. He may, however, keep a saah, a tarkab, a half of it; a kab, a half, or a quarter of it; a thuman or a half of it; and an ukla. [And how much is an ukla? A fifth of a lug.] And of liquids—a hin, a half, a third, a quarter; a lug, a half, a quarter, and an eighth, and an eighth of an eighth, which is named kartub. But why is it not allowed to keep a measure of two kabs? for one may take it for a tarkab. We see, then, that a mistake can be made in a third. Then it ought not to be allowed to keep a kab, as we may take it for a half tarkab. Therefore we must say that a measure of two kabs is not allowed, for one may take it for a half tarkab. We see, then, that a mistake can be made in a quarter, as a half tarkab measures a kab and a half. Why, then, is it allowed to keep a half thuman and ukla? Said R. Papa: Small measures are known to the people, and no mistake can be made. But why is it allowed to keep a third and a quarter of a hin? Because these measures were used in the Temple, the rabbis would not care to prohibit them. But why were they not prohibited in the Temple also? Because the priests were always careful.

Samuel said: If the elders of the city want to enlarge the measures, it must not be more than a sixth of them; and the same is the case when they want to enlarge a coin. And the seller should not fix his profit at more than a sixth (provided the price of the stuff has not increased; but if it has, then the profit may be even twofold).

Let us see what is the reason of Samuel's decision? Shall we assume that the reason is, if the wholesalers do not increase the price more in proportion, then they may do so even when it is enlarged to one-sixth exactly? And if the reason is not to make void the sale (as exacting more than a sixth makes the sale null and void)? Did not Rabha say: Every sale by measure, weight, or number, if there should be an exaction of even less than the law prescribes, it may be retracted? Therefore it must be said that the reason is that an outside seller should not suffer any damage (*i.e.*, if an outside seller, who is not aware of the increase, sells for the same price as before, and his profit is usually a sixth, if it was enlarged to a sixth only then he derives no profit, but neither does he suffer any damage in the cost price). Is that so? Does not the seller need to make profit on

his sale? Should one who sells at cost be called a merchant? Therefore said R. Hisda: Samuel took as a basis for his decision the following verse [Ezek. xlv. 12]: "And the shekel shall be twenty gerahs: (in pieces of) twenty shekels, five and twenty shekels, fifteen shekels, shall be your maneh." Was, then, a maneh sixty shekels, which makes two hundred and forty zuz? Therefore from this verse may be inferred three things: (*a*) That the maneh of the sanctuary was in value twice as much as the common shekel; (*b*) that it is allowed to increase a sixth, but not more; and (*c*) that the sixth may be added even from outside (*e.g.*, to add ten to fifty, so that the sixth may be reckoned after being added, as the maneh of Ezekiel is sixty shekels, while a maneh in general contains twenty-five shekels).

R. Papa b. Samuel made a kielah of three kpiz.* And to the question: Did not Samuel say there must not be added more than a sixth? answered he: I have invented a measure entirely new. He sent it to Pumbeditha, and it was not accepted; but the city of Papunia accepted it, and called it *Rus-Papa* (*i.e.*, the measure of Papa).

The rabbis taught: "Those who forestall fruit," etc. (here as in Derech Eretz—Rabba, Vol. IX., p. 1, line 17 *seq.*—*q. v.*). Those who forestall fruit—who are meant thereby? Said R. Johanan: People like Sabbati, the forestaller of fruit (whose custom was to buy fruit only for the purpose of selling it to the poor at a high price; but if one buys fruit at the cheap season not for this purpose, and the price increases, and he sells it at the existing price, it does not matter). The father of Samuel used to buy grain at harvest-time, and sold it at the same price. Samuel his son, however, used to store up the grain he bought in harvest until the price became higher, and then sold it at the same price as in harvest-time. And from Palestine a message was sent that the acts of the father were more meritorious than those of his son. Why so? Because through the acts of the father the wholesaler could not increase the price, while the acts of the son did not prevent the increase of price, and his selling cheap could not affect the high price which was already fixed.

Rabh said: One may store up the grain he has harvested from his field (as it is prohibited only to buy in the market at

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* A kpiz was nine lugs, or a kab less one lug; acccording to others, one lug, and the kielah was the same as a half tarkab, which contains one and a half kabs.

harvest-time for the purpose of increasing the price). And so we have also learned in the following Boraitha: One must not forestall fruit, grain, etc., by which a livelihood is made, as, *e.g.*, wine, oil, and fine flour; but spices, pepper, etc., one may. This is said, however, if one buys it from the market; but from one's own field it is allowed to store everything. One is also allowed to store up in Palestine for the following three years—for the eve of a Sabbatic year, for the Sabbatic year itself, and for the succeeding year (as in the last year people must wait for the new crop). In famine years, however, even a kab of carobs must not be stored up, for it produces a curse to the prices. R. Jose b. Hanina said to Puga his servant: Go, store up for me grain for three years—for the eve of the Sabbatic year, the Sabbatic year itself, and the succeeding year.

The rabbis taught: There must not be exported from Palestine things by which a livelihood is made, as wine, oil, and fine meal. R. Jehudah b. Bathyra allows to export wine, because it diminishes intoxication; and even from Palestine to Syria the export of the above is prohibited. Rabbi, however, allows export from the last province of Palestine to the first province of Syria which bounds it.

The rabbis taught: One must not buy from the farmer things by which a livelihood is made for the purpose of selling in the market at a higher price in the provinces of Palestine; but for the farmer himself it is allowed to sell in the markets.

It was said, however, that R. Elazar b. Azarya used to sell wine and oil to the retail dealers, and they sold it at a higher price; and the reason was, that he holds with R. Jehudah concerning wine; and oil was abundant in the markets of his place, so that the retail dealers could not affect the price.

The rabbis taught: One must not derive twice a profit on eggs. Said Mari b. Mari: In the interpretation of the Boraitha Rabh and Samuel differ. According to one, it means one shall not double the price; and according to the other, it means one seller shall not sell it to another seller so that he has profit, and the seller in the market will also make a profit—but he himself must sell it in the market.

The rabbis taught: It may be prayed by blowing of horns, even on Sabbath, when business becomes dull. Said R. Johanan: This is to be done in case remnants of flax become very low in Babylon, and wine and oil in Palestine. Said R. Joseph: Provided that the stuff was lowered to near half-price.

The rabbis taught: One must not emigrate from Palestine to other provinces, unless the price of grain has increased to the extent of a selah for two saahs. Said R. Simeon: This is only when one could not find any grain at all to buy; but if he can get it even at the price of a selah for each saah, one must not emigrate. And so also was the opinion of R. Simeon b. Johai, who used to say that Elimelech, Mahlon, and Kilyon were the great men of their generation, and were their leaders; and they were punished only because they emigrated from Palestine. As it is written [Ruth, i. 19]: "All the city was in commotion about them, and people said, Is this Naomi?" And to the question: What does it mean? said R. Itz'hak: It means: See what has become of Naomi, who emigrated from Palestine.

He said again: At that day when Ruth reached Palestine, the wife of Boaz had died; and this is what people say, that before the deceased departed the substitute for managing the house was already prepared. Rabba b. R. Huna in the name of Rabh said: Boaz is identical with Ibzan. What came he to teach us? That which was said in his name elsewhere, viz.: One hundred and twenty banquets Boaz made for his children. As it is written [Judges, xii. 9]: "And he had thirty sons, and thirty daughters he sent abroad, and thirty daughters he brought in for his sons from abroad," etc. And at each marriage two banquets were given—one in the father's and one in the father-in-law's house—and to not one of them did he invite Manoah, saying: What return can I expect of this childless man? And there is a Boraitha that all the children died when he (Boaz) was still alive. And he remarried and begat one who was better than all the sixty, the same was Obed, who was born by Ruth, from whom David descended.

R. Hanan b. Rabha in the name of Rabh said: Elimelech, Shalman the kinsman, [Ruth, iv. 1] and the father of Naomi all were the descendants of Nahshon ben Aminadab. To what purpose was it said? To teach that even him who is a descendant of such great men, the meritorious acts of his parents do not absolve him when he emigrates from Palestine. The same said again in the name of the same authority: The name of Abraham's mother was Amthlai bath Khrubu, and the name of Haman's mother was Amthlai bath Urbthi; the name of the mother of David was Nzb'th bath Edal; the mother of Sampson, Z'llpunith, and his sister N'shiin. To what purpose was this said? For an answer to the Epicuristen (who deny all

the legends of the Bible, saying, for instance: If Abraham existed, why was his mother's name not mentioned, as doubtless his father had many wives, and the mother of Abraham should be distinguished, the same being the case with the others mentioned above? and we answer them that all their names are known to us traditionally).

The same said again in the name of the same authority: Abraham our father was in prison ten years—three in the city of Khutha and seven in Qurdu. R. Dimi of Nahardea, however, taught the reverse (seven in Khutha and three in Qurdu; some say that he was imprisoned by Nimrod and others by his father, because he broke his idols). R. Hisda said: The city Eibra-Zeira of Khutha is the city Ur Kasdim mentioned in the Bible.

R. Hanan b. Rabha in the name of Rabh said again: On the day when Abraham our father departed from this world, all the great men of the nations stood up in a file and said: Woe to the world, that has lost its leader! and woe to the ship, that has lost its χυβερνηζης (steerer)!

It is written [I Chron. xxix. 11]: "And thou art exalted as the head above all." And the above said in the name of Rabh: Even an officer of wells (who has to keep order in using them for watering the fields) is appointed by Heaven (*i.e.*, that even such an insignificant office is not filled without the decree of Heaven; and he takes the verse literally, "and thou art exalted over all the heads that are appointed by thee").

R. Hyya b. Abin in the name of R. Jehoshua b. Karsha said: Elimelech would not emigrate from Palestine, if he could get even bran-flour for use. But why was he punished? Because he ought to have prayed for his generation, which he did not. As it is written [Is. lvii. 13]: "By thy crying thou canst be saved with all who are gathered with thee."* Said Rabba b. b. Hana in the name of R. Johanan: One must not emigrate from Palestine when money is cheap, but the grain high; but if *vice versa*, even when the price of four saahs is only one selah, one may. As R. Johanan said: I remember a time when there were four saahs for one selah, and there were many who starved, as they did not have an issar. And he said again: I remember that working people did not wish to take work on the east side of the city, as the smell of bread (which the west wind carried

* Leeser translates differently; the Talmud, however, takes it literally.

to them) would kill them, as they had not eaten fresh bread for a long time. The same said again: I remember when a child used to break a piece of carob, threads of honey would leak out and moisten his hands. R. Elazar said: I remember, when a raven would catch a piece of meat, a thread of fat would be seen dropping from the height to the ground. R. Johanan said again: I remember times when a young girl of sixteen and a boy of seventeen walked together and did not sin. He said again: I remember what was said in college: Who yields to idolaters in discussion, the end will be that he will fall into their hands; and he who confides in them, all that he possesses will remain in their hands.

It is written [Ruth, i. 2]: "Mahlon and Kilyon," and in [I Chron. iv. 22]: "Joash and Saraph." Rabh and Samuel differ. One said that the real names were Mahlon and Kilyon; but why were they named Joash and Saraph? Joash, because they despaired of redemption, and Saraph, because they were liable to burning. And the other says their real names were Joash and Saraph; and why were they named Mahlon and Kilyon? Mahlon, because they made themselves very common by their emigration, and Kilyon, because they were liable to destruction.*

It seems that Mahlon and Kilyon were their real names, as we have learned in the following Boraitha: It is written [ibid., ibid.]: "And Jokim and the men of Coseba, and Joash and Saraph, who had dominion in Moab and Jashubi-lechem. And these are ancient things."

Jokim means Joshua, who had confirmed the oath which was given to the men of Gibeon; and "the men of Coseba" † means the men of Gibeon, who lied before Joshua. Joash and Saraph were Mahlon and Kilyon; and why were they named Joash and Saraph? Because they despaired of redemption, and for this they were liable to burning. "Who had dominion in Moab" means that they had married daughters of Moab. "And Jashubi-lechem" means Ruth the Moabitess, who had returned and was attached to Beth-Se'hem. "And these are ancient things" means the above was said by Him who is older than the days. As it is written [Ps. lxxxix. 21]: "I have found David my servant." It is also written [Gen. xix. 15]: "And

* Joash means *despair*; Saraph, *burn*; Choolin, *common*; and Kilyon, *destroying*.

† Khzb in Hebrew means *lie*.

thy two daughters, that are found."* It is written [I Chron. iv. 23]: "These were the potters (Hayozrim), and those that dwelt in plantations and sheepfolds; for the king's sake, to do his work, they dwelt there." Hayozrim† means the children of Jonadabh b. Rechab, who preserved the oath of their father. "In plantations" means the king Solomon, who was a plant in his kingdom. Vegidroh (sheepfolds) means the Sanhedrin, who had fenced the broken partition of Israel. "For the king's sake," etc., means Ruth the Moabitess, who lived to see the kingdom of Solomon her great-grandson. As it is written [I Kings, ii. 19]: "And placed a chair for the king's mother." And R. Elazar said that it means "to the mother of the kingdom."

The rabbis taught: It is written [Lev. xxv. 22]: "Shall ye eat yet of the old harvest," which means without need of preserving. How is this to be understood? Said R. Na'hman: It will not be worm-eaten. And R. Shesheth said: It will not be singed. There is a Boraitha in accordance with R. Na'hman: "Of the old harvest," lest one say that Israel must wait for the new crop, as the old has already gone, therefore it is written [ibid., ibid.]: "Until its harvest come in," which means, until the harvest shall come by itself (and he will not need to take it before it is ripe, and make it fit for use by drying).

And there is also a Boraitha in accordance with R. Shesheth: "Ye shall eat yet from the old harvest," lest one say that Israel would have to wait for the new harvest because the old one became spoiled, therefore it is written, "Until its harvest come in," which means that the old will suffice until the new shall come in its natural way, without any need to take it before it is ripe.

The rabbis taught: It is written [ibid. xxvi. 10]: "And ye shall eat very old store." From this may be inferred that a thing that is older is better, but this is said of things which are used to be preserved. But whence do we know of things which are not to be preserved? Therefore it is written: "Joshon Noshon" (literally, *old, old*) [ibid., ibid.], "and the old ye shall remove because of the new," from which is to be inferred that at that time all their granaries were filled up with the old crop and their barns with the new. And Israel used to say: "Why

* Leeser translates "they are here"; but in the Bible is written Hninzouth, literally, "who are found."

† Nozar in Hebrew means *preserved.*

should we remove the old, which is as good as the new, for the latter?"

Said R. Papa: All old things are good, except dates and the beer thereof, and *harsnah* (a dish at that time used by the poor —see Aboda Zara, 73*a*).

Rabba said:* Sailors told me the wave that usually makes the ship sink is visible by a ray of whitish light, and we struck it with a stick, upon which is engraved, "I will be that I will be" [Ex. iii. 14]. Then it became quiet. He said again: The sailors told me that from one wave to the other are three hundred parsas, and the height of each wave is also three hundred parsas. It once happened that I was on the boat, and a wave lifted me up to such a height that I could see the basis of a little star, and in my eyes it looked as a space where forty saahs of mustard could be sown. Should the wave have lifted me up higher, I would have been burned by the heat of that star; and I heard a voice, one wave speaking to the other: My colleague, did you leave something in the world which thou hast not destroyed, that I may accomplish it? And the answer was: Go and see the Might of thy Master, as there is only one row of sand that separates the sea from the land; and yet I could not step over it. As it is written [Jer. v. 22]: "Will ye not fear me? saith the Lord; will ye not tremble at my presence, who have placed the sand as a bound for the sea by an everlasting law, which it never can pass over? and though the waves thereof be upheaved, yet can they not prevail; though they roar, yet can they not pass over it."

He said again: I have seen Hurnim bar Lilith, who jumped on the top of brick-houses of the city of Mehusa, and was running so fast from one to the other that a rider could not overtake him. Once it happened that two mules were saddled for him on the two bridges over the river Druggring, which were far from each other, and he jumped continually from one saddle to the other, while holding two cups of wine, pouring from one into the other continually without spilling one drop, and this

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* This matter is transferred from its place at p. 167. See foot-note there.

The Hagadah is known under the name Rabba's or Rabha b. b. Hana's Legends. The scores of commentators thereon say that this is allegoric, and each of them tries to explain after his manner (*e.g.*, philospher, philosophically, moralist, morally, etc.). We, however, translate literally, without any explanation, leaving it for the consideration of the reader.

day was such a stormy one, as illustrated [Ps. cvii. 28], until the government took notice of him, and he was slain.*

He said again: I have seen a roebuck one day old, which was like the mountain of Tabur, which measures four parsas; and the length of its neck was three parsas and the space covered by its head one and a half parsas; and when it emitted excrement it stopped the Jordan.

Rabba b. b. Hana said again: I have seen an alligator as large as the city of Hagrunia, which contained sixty houses. A snake came and swallowed it, and a large-tailed raven came and swallowed the snake, and then the raven sat on a tree. Come and see how strong was that tree! R. Papa b. Samuel said: If I had not been there, I should not have believed it.

Rabba said again: At one time when on board of a ship I saw a fish into whose gills a reptile crept from which it died, the sea throwing it out on land. And sixty streets were destroyed by its fall, and sixty streets consumed its flesh, and sixty other streets salted the flesh that was left; and from one eye they filled three hundred measures of oil; and when I returned thither after twelve months, I saw its bones being sawed to restore the streets that were destroyed by it.

He said again: At one time I was on board of a ship, which was driven between two fins of a fish, three days and three nights the fish was swimming against the wind and we were sailing with the wind [and lest one say that the ship did not go fast enough, when R. Dimi came from Palestine, he said that it was so fast that in the time of heating a *cumcuma* of water the ship ran sixty parsas, and a rider shooting an arrow at the same time could not be swifter than the ship]. And R. Ashi said that this was one of the smallest fishes of the sea which has two fins.

The same Rabba said again: It once happened that I was going on a boat, and saw a fish on which sand was gathered and grass grown thereupon. And we thought it was an island, descended, baked and cooked upon it. When the back of the fish grew hot, it turned over, and had the ship not been so near we would have been drowned.

The same Rabba said again: At one time while on board of a ship I saw a bird which was standing in water that reached only up to its toes; its head, however, reached the sky, and we

* Whether he was a human being or a demon, it is hard to say. As to this, commentators differ, and also as to which government—whether natural or supernatural.

thought the water was shallow, so we were about to bathe there, when we heard a heavenly voice: Do not go down, for a carpenter here lost an axe seven years ago, and still it has not reached the ground—not because it is so deep, but because of the current. Said R. Ashi: This bird is the *Zeez Sodai* mentioned in Ps. l. 11.

Rabba b. b. Hana said again: It happened once, while in the desert, that I saw geese of which the feathers fell out owing to their fatness, and a whole river of fat was beneath them, and to my question, "Have I a share in you in the world to come?" one of them lifted up its wing, and one of them a foot. When I told this to R. Elazar, he said: Israel will be punished for them, as by his sin Messiah does not come, and the geese must endure their fatness.

The same Rabba said again: Once while in the desert we were accompanied by an Arabian merchant who used to take a clod of earth, smell it, and say: This way leads to such a place, and this to such a one. And we asked him: How far are we from water? And he smelt the earth, saying: Eight parsas. Thereafter we gave him other earth to smell, and he said: Three parsas. I changed the clods of earth, but we could not deceive him, and he said to me: Come with me. I will show you the corpses of the dead in the desert at the time of Moses. I did so, and their appearance was as fresh as if they went to sleep while drinking. All of them were lying on their backs. The foot of one of them, however, was lifted up, and the merchant, while riding and holding a spear in his hand, passed beneath it, without reaching the joint of his knee. I took and cut off a corner of one's *taliths*,* in which were tsitsith. Then neither we nor our cattle could stir. Said the merchant to me: Perhaps you have taken something belonging to the dead, as I have a tradition that if one takes something from them he cannot stir. When I told this to the rabbis, they said: The whole Abba is an ass, and the whole Bar Bar Hanah is nonsense (all his stories are). For what purpose didst thou take it? To know with whom the Halakha concerning tsitsith prevails—whether with the school of Shammai† or with the school of Hillel? Then thou oughtest to have investigated their tsitsith by counting the threads and knots. Then (continued Bar Bar

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* The garment in which *tsitsith* are woven.

† In Tract Menachoth the schools differ in the number of threads and knots.

Hanah) the merchant said to me: Come and I will show you the mountain of Sinai. I followed him, and saw that it was surrounded by serpents. All of them were standing, and looked like white asses. I also heard a heavenly voice saying: Woe is me that I have sworn; and now after having so done, who will absolve me from that oath? When I told this before the rabbis, they said again: The whole Abba is an ass, etc. Why didst thou not say: Thou art absolved, thou art absolved? [He, however, did not do so, because he thought: Perhaps it means the oath for the deluge, referring to what is written in Is. liv. 9: "As I have sworn that the waters of Noah," etc. The rabbis, however, were right in accusing him, as if it were about the deluge, why, then, "woe is me"?] The same merchant said to me: Come and I will show you the place where the children of Korah were swallowed. And I saw two crevices in the ground from which smoke issued. I took a piece of wool, wetted it with water, put it on my spear, placed it in the crevice, and when I took it out it was smudging. And the merchant said to me: Stoop down and hear. And I heard them saying: Moses and his Torah are true, and we are liars. Said the merchant to me: Each thirtieth day of the month, Gehenna turns them over here, like meat in a kettle, and they (the swallowed) repeat the above.

He said again to me: Come and I will show you where the sky and earth meet. I followed him, took my basket, and put it on the window of the sky. After praying, I searched for it but could not find it. Then I said to the merchant: Are there, then, thieves here? And he answered: It was the wheel of the sky which took it with it. Wait until to-morrow at this same time and you will find it.

R. Johanan used to tell: Once while on board of a boat I saw a fish which raised its head out of the water, and its eyes looked like two moons; water was pouring from both of its nostrils like the two rivers of Sura.

R. Saphra used to tell: Once while on board of a boat I saw a fish which had horns raising up its head from the water, and on its horns was engraved thus: "I am of the small creatures in the sea and measure three hundred parsas, and I am going into the mouth of the leviathan." Said R. Ashi: This is a sea-goat that digs with its horns the ground of the sea.

R. Johanan told again: Once while on board of a boat I saw a χαρταλος (a kind of basket) which was set with diamonds and

pearls and surrounded by a kind of fish called *karshah*, and a diver descended in order to catch it; but the basket made a motion and threatened to break his leg. He, however, threw a leather bag containing vinegar (according to others a leather bag with sand) towards it, and the basket sank. At the same time a heavenly voice spoke to us: What business have ye with this *kartilitha*, which belongs to the wife of R. Hanina b. Dosa, who will deposit in it the purple for the upright in the world to come?

R. Jehudah of Mesopotamia used to tell: Once while on board of a ship I saw a diamond that was encircled by a snake, and a diver went to catch it. The snake then opened its mouth, threatening to swallow the ship. Then a raven came, bit off its head, and all water around turned into blood. Then another snake came, took the diamond, put it on the carcass, and it became alive; and again it opened its mouth, in order to swallow the ship. Another bird then came, bit off its head, took the diamond, and threw it on the ship. We had with us salted birds, and we wanted to try whether the diamond would bring them to life, so we placed the gem on them, and they became animated, and flew away with the gem.

The rabbis taught: It happened with R. Eliezer and R. Jehoshua who were on a ship, that R. Eliezer was asleep and R. Jehoshua awake. The latter became frightened, so that R. Eliezer awoke, and said: What is the matter, Jehoshua? What have you seen that frightened you? And he answered: I have seen a great light on the sea. Rejoined R. Eliezer: Perhaps you have seen the eyes of the leviathan about which is written [Job, xli. 10]: "And his eyes are like the eyelids of the morning dawn."

R. Ashi said: Huna b. Nathan told me: It happened once, while I was in the desert, and we had with us a leg of meat, that we cut it, made it legal for eating, put it on the grass, and went to gather wood for roasting. When we returned, the leg had resumed the shape it had before it was cut; and we then roasted it. When we returned after twelve months, the coals upon which it was roasted were still alive. When I told this to Amemar, he said that the grass was *samtrie*, that has the quality of combining things which were previously separated; and the coals were of broom-brush, which when ignited remains alive for a long, long time.

It is written [Gen. i. 21]: "And God created the great sea

monsters." Here in Babylon they translate this the *reem* of the sea. R. Johanan, however, says: It means leviathan—leviathan male and female, as it is written [Is. xxvii. 1]: "On that day will the Lord punish with his heavy and great and strong sword leviathan the flying serpent and leviathan the crooked serpent, and he will slay the crocodile that is in the sea."

R. Jehudah in the name of Rabh said: All that the Holy One, blessed be He, created, was male and female, and also the leviathan—the flying serpent male and the crooked serpent female; and if they should have intercourse they would destroy the world. Therefore the Lord made the male impotent, and killed the female and salted it for the upright in the world to come, as it is written [ibid.]: "And he will slay the crocodile," etc.; "and also the cattle upon a thousand mountains" [Ps. l. 10]. He created them male and female, and if they should have intercourse they would destroy the world. Therefore the Holy One, blessed be He, made impotent the male and made cold the female, and preserved it for the upright in the world to come, as it is written [Job, xl. 16]: "only see (how great) is the strength in his loins," meaning the male, "and his force in the muscles of his belly," meaning the female.

But why did He not make cold the female of the leviathan also? Because a salted female has a better taste. And why did He not salt the females of the cattle in question? Salted fish gives a good taste, but salted meat does not.

The same said again in the name of the same authority: At the time the Holy One, blessed be He, willed to create the world, He said to the ruler of the sea: Open thy mouth, and swallow all waters that are to be found in the world. And he said: Lord of the Universe, is it not enough that I swallow the water under my dominion? And he was therefore killed immediately, as it is written [ibid. 12]: "By his power he split in pieces the sea, and by his understanding he crushed *Rahab*." Said R. Itz'hak: Infer from this that the name of the ruler of this sea is *Rahab*, and did not the waters of the sea cover the body, not one of the creatures could remain alive owing to the bad smell, as it is written [Is. xi. 9]: "They shall not do hurt nor destroy . . . as the waters cover the sea." Do not read "cover the sea," but "cover the ruler of the sea."

R. Jehudah in the name of Rabh said again: The Jordan discharges by the cave of Pmias. There is also a Boraitha: The Jordan discharges by the cave of Pmias, and flows to the sea of

Sipchi, of Tiberias, until it reaches the ocean; and through it it flows until it reaches the mouth of the leviathan, as it is written [Job, xl. 23]: "He remaineth quiet, though a Jordan rusheth up to his mouth."

Rabha b. Ula opposed: "Did not this verse speak of the cattle on the thousand mountains? Therefore," said he, "this verse must be interpreted thus: When are the cattle in question sure that they shall remain alive? When the Jordan reaches the mouth of the leviathan (*i.e.*, so long as the leviathan lives, they are sure that they shall remain alive, as all are prepared for the world to come when the Messiah shall appear)."

When R. Dimi came from Palestine, he said in the name of R. Johanan: It is written in Ps. xxiv. 2: "For upon seas he hath founded it, and upon rivers he hath established it." It means the seven seas and four rivers which surround the land of Israel (Palestine); and they are the sea of Tiberias, Sodom, Chirat, Chiltha, Sipchi, Aspamia, and the Ocean: these are the seven seas, and the four rivers are Jordan, Jarmuch, Kirumyun, and Phiga.

The same R. Dimi said in the name of R. Jonathan: The angel Gabriel will go hunting for the leviathan, as it is written [Job, xl. 25]: "Canst thou draw out the crocodile (leviathan) with a fishhook? or cause his tongue to sink into the baited rope?" And should not the Holy One, blessed be He, help him, he would not conquer him, as it is written [ibid., ibid. 19]: "He is the first in rank . . . he that hath made him can alone bring his sword near to him."

The same said again in the name of R. Johanan: When the leviathan becomes hungry, he expels from his mouth a gas which makes boil all the waters in the deep, as it is written [ibid. xli. 23]: "He causeth the deep to boil." And should he not enter his head in paradise, not one of the creatures could withstand the bad smell of the gas, as it is written [ibid., ibid.]: "He rendereth the sea like an apothecary's mixture." And when he gets thirsty, he makes the sea hollow like beds, as it is written farther on: "Behind him he causeth his pathway to shine." And R. Aha b. Jacob said: The deep does not come to its natural way before seventy years, as it is written: "Men esteem the deep to be hoary"—and hoary is not less than seventy years.

Rabba said in the name of R. Johanan: The Holy One, blessed be He, will make a banquet for the upright from the

flesh of the leviathan, as it is written [ibid. xl. 30]: "*Yichrov** *Olof Chahvierim.*" Yichrov means a banquet, as it is written [II Kings, vi. 23]: "And he prepared for them a great meal" (the expression in Hebrew being *Veyichre*, etc.); and Chahvierim means scholars, as it is written [Solomon's Song, viii. 13]: "Companions (Chaverim) listen for thy voice," etc. And the remainder of it will be cut in pieces, and be sold in the markets of Jerusalem, as it is written [Job, xl. 30]: "Divide him among merchants."

The same said again in the name of the same authority: The Holy One, blessed be He, will make a booth for the upright from the skin of the leviathan, as it is written [ibid., ibid. 31]: "Canst thou fill his skin with *Soukoth.*"† If the upright is to have a booth, a booth is made for him from it; and if less, a little hut; and if still less, a necklace will be made for him, as it is written [Prov. i. 9]: "And chains for thy throat"; and if still less, an amulet will be made for him, as it is written [Job, xl. 29]: "And tie him up for thy maidens"? And the remainder of the skin the Lord will spread on the walls of Jerusalem, and the brightness of it will shine from one end of the world to the other, as it is written [Is. lx. 3]: "And nations shall walk by thy light, and kings by the brightness of thy shining."

It is written [ibid. liv. 12]: "And I will make of *kadkad* (rubies) thy battlements," etc. Said Samuel b. Nahmeni: Two angels—in heaven, Gabriel and Michael, according to others two Amoraim of Palestine, and they are Jehudah and Hiskiyah the sons of R. Hyya—one says it means *shoham* (onyx) and others jasper, and the Holy One, blessed be He, said: Let it be as both say. [Is. liv. 12]: "And thy gates," etc. This is as R. Johanan lectured while sitting: The Holy One, blessed be He will bring jewels and pearls the size of thirty ells square, twenty ells in height and ten in width, and will place them on the gates of Jerusalem. And one disciple ridiculed him: We do not even find a jewel as large as the egg of a dove, and he lectured about such sizes? Thereafter it happened that the same disciple was on a boat on the high sea, and he saw angels who sawed jewels and pearls the size of thirty ells square, boring holes in them twenty in height and ten in width. He asked them: For what purpose? And they answered: The Holy

* Leeser's translation could not be used here.

† In the Scripture it is written with *Seen*, which reads like *Samach*, and Sukkah means a booth. Leeser's translation cannot here be used.

One, blessed be He, will place them on the gates of Jerusalem. And when he returned he said to R. Johanan: Lecture, Rabbi, for all you said is true, as I have myself seen. And R. Johanan said to him: Ignoramus, if you had not seen it, you would not have believed. So you would ridicule the words of the sages? He cast his eyes on him, and he became a heap of bones.

An objection was raised: It is written [Lev. xxvii. 13]: "I will lead you *gummiuth.*" * R. Meir said: It means two hundred ells, double the height of Adam the first, who was one hundred ells in height. R. Jehudah, however, said: It means one hundred ells, the size of the Temple with its walls, as it is written [Ps. cxliv. 12]: "So that our sons may be like plants grown up in their youth, our daughters like corner-pillars, sculptured after the model of a palace." (Hence we see that according to both the height of the Temple will be one hundred ells at least. Why, then, said R. Johanan only twenty in height?) R. Johanan only meant for the windows in the gates that let in air.

Rabba in the name of R. Johanan said: The Holy One, blessed be He, will make seven canopies (*chupas*) for each upright, as it is written [Is. iv. 5]: "And then will the Lord create upon every dwelling of Mount Zion, and upon her places of assembly, a cloud and smoke by day, and the brightness of a flaming fire by night; for over all the glory shall be a covering (*chupa*)." Whence we deduce that the Holy One, blessed be He, will make a *chupa* to each upright according to His dignity. But why smoke to a *chupa?* Said R. Hanina: Each one who looks with a bad eye upon the scholars in this world, his eyes will be filled with smoke in the world to come. And why fire (in the *chupa*)? Said R. Hanina: Infer from this that each of the upright will be burned by the *chupa* of his neighbor. And woe to such a burn and such a shame! (*i.e.*, the neighbor's *chupa* is so beautiful and large that my *chupa* looks like a small hut against his). Similar to this is what is written [Num. xxvii. 20]: "And thou shalt put some of thy greatness upon him." But not all of it. The elders of that generation used to say: The appearance of Moses was like the sun, and the appearance of Joshua like the moon. Woe to such a burn! woe to such a shame!

R. Hama b. Hanina said: Ten *chupas* were made by the Holy

* *Quomah* means the height of a person, *gummiuth* means two heights. Leeser's translation cannot be used.

One, blessed be He, for Adam the first in paradise, as it is written [Ezek. xxviii. 13]: "In Eden the garden of God didst thou abide; every precious stone was thy covering, the sardius, the topaz, and the diamond, the chrysolite, the onyx, and the jasper, the sapphire, the emerald, and the carbuncle, and gold." (From the word *sardius*, including the word *gold*, are ten different kinds.) Mar Zutra says: Eleven—as he counts all the precious stones also. Said R. Johanan: The gold was less in value than all (as it is placed last). What is meant by the continuation of the same verse: "Thy tabrets and thy flutes," etc.? Said R. Jehudah in the name of Rabh: So said the Holy One, blessed be He, to Hiram the king of Tyre: When I created the world, and saw that thou wouldst rebel, deeming thyself a god, I therefore created holes and flutes in men, in order that thou shouldst be known as human. And according to others He said: "I saw that thou wouldst rebel," etc. I have therefore punished Adam the first with death, so that it should be known that thou wast human. What mean the words, "upon her places of assembly" (Isaiah, in the above cited verse)? Said Rabba in the name of R. Johanan: Jerusalem in the world to come is not like Jerusalem of this world. In the latter every one who likes to enter does so, but in that of the world to come only those invited will enter.

He said again in the name of said authority: In the world to come the upright will be named with the names of the Holy One, blessed be He, as it is written [Is. xliii. 7]: "Every one that is called by my name, and whom I have created for my glory, whom I have formed; yea, whom I have made."

Samuel b. Nahmeni said in the name of R. Johanan: The following three will be named with the name of the Holy One, blessed be He: the upright, as said above; the Messiah, as it is written [Jer. xxiii. 6]: "And this is his name whereby he shall be called—The Lord Our Righteousness"; and Jerusalem, as it is written [Ezek. xlviii. 35]: "And the name of that city shall be from that day, The Lord is there" (*shamah*). Do not read *shamah* (there), but *shmah* (her name).

R. Elazar said: In the future, *holy* will be said before the upright as now it is said before the Holy One, blessed be He, as it is written [Is. iv. 3]: "And it shall come to pass that whoever is left in Zion, and he that remaineth in Jerusalem, shall be called holy—every one that is written down unto life in Jerusalem."

He said again in the name of the same authority: The Holy One, blessed be He, will increase Jerusalem three parsas, as it is written [Zech. xiv. 10]: "And she herself shall be elevated, and be inhabited on her former site," which means that it will be increased to its former size. And whence do you know that the size of the former Jerusalem was three parsas? Said Rabba: There was a certain old man who told me that he had seen the first Jerusalem, and the size thereof was three parsas. And lest one say that it would be difficult to ascend, therefore it is written [Is. lx. 8]: "Who are these that are like a cloud," etc. Said R. Papa: Infer from this that the clouds are at a height of three parsas from the ground.

R. Hanina b. Papa said: The Lord wanted to give a measure to Jerusalem, as it is written [Zech. ii. 6]: "To measure Jerusalem." And the angels said before the Holy One, blessed be He: Lord of the Universe, there are many great cities thou hast created in thy world, belonging to the nations, of which thou hast not determined their length and their breadth. For Jerusalem, upon which thy name rests, where is thy Temple, and dwell the upright, thou dost determine a measure.

[Ibid. 8]: "And he said unto him, Run, speak to this young man, saying, Without walls shall Jerusalem be inhabited, because of the multitude of men and cattle in her midst."

Resh Lakish said: The Holy One, blessed be He, will add a *Litsuy* (probably a suburb) to Jerusalem a thousand times the area of one containing country seats and twelve hundred *Trplirus*, a thousand towers and one hundred and sixty-nine thousand gardens, and each of all that is said above will be like *Ziporias* in her glory. And there is a Boraitha which states: R. Jose said: I have seen Ziporias in her glory, and there were one hundred and eighty thousand markets in which only spices for dishes were sold. It is written [Ezek. xli. 6]: "And the side chambers were three one over another, and thirty times." What does that mean? Said R. Levi in the name of R. Papi, quoting R. Jehoshua of *Skhui*: If there were three Jerusalems, each of them had thirty chambers on the top; and if thirty Jerusalems, each of them had three chambers on the top.

END OF FIRST PART OF TRACT BABA BATHRA
AND OF VOL. V. (XIII.).

APPENDIX TO MISHNA I, CHAP. III., PAGE 83.

We deem it necessary to call the attention of the reader to the fact that the law of occupancy was chiefly taken from the ancient Roman law* about *usucapio* (occupancy), which dictates that each *usucapio* without *titulius* (claim) is not considered. The claims must be *pro emptore* (purchase) or *pro donato* (gift), *pro legato*, *pro dote*, or *pro herede* (inheritance); and with *usucapio*, which is based upon inheritance, no other claim was necessary. The law applied even when it was known that the occupant never had a deed to what he had occupied, and the reason was because the plaintiff had time to protest three years, or at three harvestings, and when he did not make any claim nor any protest, it was evident that the occupant had a right to occupy, and no other evidence was needed. There is also a difference between *præsentes* and *absentes* of the occupant. However, concerning *servitutes* (service) there was also *usucapio*, in the reverse; namely, *pro libertate* (liberty), which means that the servant or bondsman had a right to free himself by *non usus*—namely, when during three years he was never put to any work by his master he became free. But there was no *usucapio* by using the bondsman, even if for several years: property in him was not acquired if he had no other evidence. (See Ltf. Schweppe, § 305.) According to this, Abraham Krochmal, in his Scholia to the Babylonian Talmud (p. 278) maintains that the term "to slaves" in the Mishna in question means that the law of occupancy applies to these slaves themselves; viz., after three years' rest from any service to their masters, the slaves become free, but not, in accordance with the Gemara, conversely. And so he also explains Resh Lakish's statement (p. 96), "that the law of hazakah does not apply to a living creature," as unchangeable, and it seems to us that so it is.

* The law of occupancy also existed in Persia, but it prescribed no less than twenty years. See text, p. 101.

NEW EDITION

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BY

MICHAEL L. RODKINSON

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TRACT BABA BATHRA
(LAST GATE, PART II.)

Volume VI. (XIV.)

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EXPLANATORY REMARKS.

In our translation we adopted these principles:

1. *Tenan* of the original—We have learned in a Mishna; *Tania*—We have learned in a Boraitha; *Itemar*—It was taught.

2. Questions are indicated by the interrogation point, and are immediately followed by the answers, without being so marked.

3. When in the original there occur two statements separated by the phrase, *Lishna achrena* or *Waïbayith Aema* or *Ikha d'amri* (literally, "otherwise interpreted"), we translate only the second.

4. As the pages of the original are indicated in our new Hebrew edition, it is not deemed necessary to mark them in the English edition, this being only a translation from the latter.

5. Words or passages enclosed in round parentheses ( ) denote the explanation rendered by Rashi to the foregoing sentence or word. Square parentheses [ ] contain commentaries by authorities of the last period of construction of the Gemara.

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TO THE REVEREND GENTLEMEN

HERRN GEHEIMER REGIERUNGSRATH

MORITZ LAZARUS, PH.D., D.D.

UNIVERSITY PROFESSOR

AND

MONS. ZADOC KAHANA

GRAND RABBIN

DU CONSISTOIRE CENTRAL DES ISRAÉLITES DE FRANCE

WHOSE NAMES ARE FAMOUS

IN THE SCHOLARLY WORLD ALL OVER THE GLOBE

THIS FOURTEENTH VOLUME

IS MOST SINCERELY INSCRIBED BY THEIR ADMIRER AND

PERSONAL FRIEND

MICHAEL L. RODKINSON

New York, Eve of Passover, 5662 (April 21st, 1902)

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(PART II.)

CHAPTER VI.

MISHNAS *I.* TO *VIII.* If one sold fruit and it did not sprout, or an ox and thereafter it was found a goring one. May the trouble of slaughtering and selling the meat be taken into consideration? If an ox was found killed at the side of another pasturing one. Between majority and hazakah, which should be preferred (see footnote p. 217)? All hold the theory of majority. If one delivered wheat for grinding to fine meal, but the miller did not properly grind it; or if meal were delivered to a baker and he did not bake it properly. If one buys fruit, he has to accept a quarter of a kabh of dust on a saah. If he sold a cellar of wine, he must accept ten harsh barrels on each hundred. If wheat, a quarter of a kabh of peas; if barley, a quarter of chaff; if lentils, of dust. If the buyer has found more than the above prescribed quantity. The difference between *a* cellar and *this* cellar, and also if for keeping was added. May or may not wine which is sold in retail stores be considered products of the vine? If one sells wine, and it turns sour. Which wine is considered an old one. If one is proud, he is not tolerated even by his family. A commoner who disguises himself in the garment of a scholar cannot enter into the habitation of the Holy One, etc. If one sells, or a contractor undertakes to build, a wedding or a widow house. A groom who resides in the house of his father-in-law is lighter than bran, and still lighter is an invited guest who brings with him an uninvited one, and still lighter is he who answers before hearing the question. If one wishes to build a stable. If one possesses a well, situated on the other side of his neighbor's house, or a garden inside of his neighbor's. If there was a public thoroughfare through one's field, etc. If one sells a place for digging a grave, or an undertaker makes a place for one, the inside of the cave must be four by six, etc., ... 215–230

CHAPTER VII.

MISHNAS *I.* TO *VI.* I sell you earth of the size whereon one kur can be sown, etc., or measured with a line. In case the buyer has to make return, it shall be in money. If the seller said "the size of a kur," without

any addition, how is the law? "I sell you the estate," with a measurement a trifle more or less; or, "this estate . . . with its marks and boundaries." If two versions of the seller contradict each other, which is to be considered? The difference in opinion of the Amoraim in the explanation of Mishna IV. R. Papa bought an estate said to be twenty saahs—after it was measured it was found only fifteen. To two brothers who had divided their inheritance came a third brother (of whose existence they were not previously aware). If brothers divided their inheritance, and a creditor of their father came and took away the share of one of them. If the members of the court differ in the amount, upon appraisement brought before them. "I sell you the half of the field"; "The southern half of this field,"etc.—the seller has to give space for a partition, etc., ... 231–240

CHAPTER VIII.

MISHNA *I.* There are those who bequeath, and also inherit; others who inherit but do not bequeath; and also those who neither bequeath nor inherit. The passage [Num. xxvii. 8] in the Scripture does not correspond with all that is taught above. Who were the grandfathers of Pinchos ben Elazar on his mother's side. If one is about to marry, it is advisable for him to investigate the character of the bride's brothers. It is better for one to hire himself to Abhada Zarah (idolatry) than to rely upon people that shall support him. Abhada Zarah means "idolatry." Literally, however, it is "a strange service." Is the tribe of the mother's side equal to the tribe of the father's side? What happened to Janai and Jehudah the second when they came together? The husband from his wife. Whence is this deduced? Whence came Pinchos ben Elazar to have a mountain which his father did not possess? Whence is it deduced that the husband does not inherit the estate to which his wife during her life is only heir apparent? In the case of a gift with the ceremony of a sudarium, whether healthy or sick, what time may be given him to retract, ... 241–255

MISHNAS *II.* TO *IV.* The order of inheritance is thus, etc. If one decides that a daughter shall inherit, when there is a daughter of a son, even if he were a prince in Israel, he must not be listened to. What happened to Rabban Johanan with the Sadducean? "The daughters of Z'lophchod have inherited," etc. The land of Israel was divided among the ascendants from Egypt, and not among their children. Joshua and Caleb inherited the shares of the spies. Whence is this deduced? May or may not a disciple be honored in the presence of his master? Why is the order in mentioning the daughters of Z'lophchod different in the Scripture? If a woman marries at less than twenty years of age, she bears children until sixty; but when she marries after forty, she does not then bear children. There were seven men who encompassed the whole world since its creation until now, etc. How was the land of Israel divided—into twelve parts, or among the people severally? The land of Israel will be divided among thirteen tribes. A son and a daughter are equal concerning inheritance, etc. How shall the double share of the first-born be counted—double as to each brother or as to the whole estate. What is the reason that Jacob took away the privilege of the first-born from Reuben and gave it to Joseph? Jacob's children, who came to Egypt, in sum you find seventy; however, if you will number

them in detail, you will find only sixty-nine. In the case of inheritance of a promissory note, the first-born took a double share, etc. A first-born does not take a double share in a loan. The Palestinians, however, say he does. What is to be done with an estate bequeathed for life only, which the inheritor has sold? A first-born does not inherit property to come in the future, and the same is the case with a husband. If the first-born protests when his brothers come to improve the estate left by their father, 255–271

MISHNAS *V.* TO *VII.* A will which is against the law of the Scripture must not be listened to; however, if it is as a gift, it may. "My son is my first-born," he takes a double share; "My son is a first-born," he does not. "Go to Sh'kh'at my son, who is a first-born, whose spittle cures eyes." If two wives of one have born two sons in a secret place which was dark, and it is not known who was born first, they may write a power of attorney each to the other, etc. If one was known to the people as a first-born, and his father said of another, etc. A creditor may collect from bondsmen belonging to orphans for their father's debt. A second-cousin, a third-cousin, may be a witness (according to the law). If one says, "This child shall inherit all," or, "My wife shall take an equal share with one of my sons," he is to be listened to. If the word "gift" was mentioned in the beginning, etc. How is this to be illustrated? If one wrote, "The field on the east side shall be given to A, and B shall inherit that on the west side," is title given or not? All that is said in one speech is valid, except as to idolatry. If one says: "A shall inherit my estate," and he has a daughter, he said nothing; or, "A shall inherit my estate instead of my daughter," or, "My daughter instead of my son"—how is the law? A Halakha must not be taken for granted from a discussion or from an act, unless one is told to do so. Rabbi said: My youth made me presume to contradict Nathan the Babylonian. If one bequeath all his estates to his wife, he makes her a guardian only. (All that is said above treats of a will by a sick man.) How is it if this was done while in good health? If one has bequeathed all his estates to his sons, but has left to his wife a small portion of ground. How is it in a similar case when one is in good health? A sick person who has bequeathed all his estate to a stranger, it is to be investigated if the latter is in some way fit to be called a direct heir. An inheritance has no interruption, and goes direct to the heirs of the inheritor. The rabbis condemned one who bequeathed his estate to strangers, leaving out his children. What happened to Shamai the elder with Jonathan b. Uziel,

271–297

MISHNAS *VIII.* TO *XII.* "This is my son," he is to be trusted; "My brother," he is not. If one testify he has divorced his wife, he is to be trusted. If a short period of time, can one's testimony be divided—that for the past he should not be trusted, and for the future he should? If a sick person said to witnesses: "Write, and give a mana to so and so," and before they did so he dies. How is it if the same was said by one in good health? If one wishes to bequeath his estate to his children, etc. How if he has written "from to-day and after my death"? If a sudarium is mentioned, no matter what version was used, nothing is needed to be added. "My estates are bequeathed to you, and after you to B," etc. Who is called a crafty villain? To a gift presented by one who is dying, at what time is title given? There was a woman who had a tree on the estate of

R. Bibbi b. Abayi, etc. If A said to B, "I give you this ox as a present, with the stipulation that you shall return it to me." If a sick man said, "I have a mana with so and so," the witnesses may write this, etc. The Halakha prevails that it must not be feared the court will err. The father has the right to gather the products bequeathed to his son, etc. If he left grown-up and minor sons, the grown ones have no right to derive any benefit on account of the minors, etc. How is it if a woman has borrowed money, consumed it, and thereafter she married without paying her debt, and brought estates with her at marriage? "The following is not to be returned in the jubilee year," etc. (p. 310). In some respects the husband should be considered as an heir, and in some respects as a buyer, 297–311

CHAPTER IX.

MISHNAS *I.* AND *II.* If one leave sons and daughters, if the inheritance is of great worth, the daughters must be supported from it; if a moderate one, the daughters must be supported, and the sons may go a-begging. If the estates were of great worth, but there was a promissory note in the hands of a creditor. If the deceased left a widow and a daughter, and the estates left could support only one of them. If one leave sons, daughters, and an hermaphrodite. "If my pregnant wife shall bear a male," etc. A child of one day inherits and bequeaths, etc. All that was said here was taught in the city of Sura. In Pumbeditha, however, it was taught otherwise, etc. One said, "I bequeath my estate to the children who shall be born of you by me," etc. One said, "My estate shall be for you and your children." And R. Joseph decided: One half of the estate belongs to her, and the other half to her children. There was one who had sent home pieces of silk, without any order to which member of his household they belonged, . 312–321

MISHNAS *III.* TO *VII.* If one left grown-up and minor sons, and the former improved the estate, etc. If one has made the wedding of his son in one of his houses, the son acquires title to the house, etc. Three things the rabbis enacted as laws without giving any reason. Brothers partners in business; if one of them was taken by the government to work, etc. If one of the brothers took two hundred zuz to begin the study of the Torah or to learn a trade, etc. Wedding presents may be replevined by the court. If one has betrothed a woman and dies before marriage, a virgin collects two hundred and a widow one hundred zuz. Five things were said about wedding presents: (*a*) They may be collected by the court; (*b*) they are returned at the time when the donator marries, etc. Who is like unto a wealthy man who is known to be rich by his many cattle and estates, etc.? The different explanations of Prov. xv. 15. If one sends presents to the home of his betrothed's father, to the value of one hundred manas, and has partaken of the betrothal meal, even for one dinar, they are not to be returned. How is it when the presents have improved, etc.? If a sick person had bequeathed all his estates to strangers, etc. Three things Achithophel charged his sons, etc. If a sick person said: "A shall reside in such a house," or, "B shall consume the products of such and such a tree," etc. A sick person who has bequeathed all of his estates to strangers, it must be investigated how was the case. If a sick person has bequeathed all his estates to strangers and thereafter is cured. The expressions, "He shall take," "shall be rewarded."

How shall it be done if he expresses himself: "A is the one who shall derive benefit from my estates"? If a sick person has confessed, "I owe so much to so and so," shall it be taken for granted, etc.? In five cases the act of a gift is not considered unless the bequeather writes "all my estates." What is considered estates? How is the case with the Holy Scrolls—as they must not be sold, are they considered estate or not, etc.? The mother of Rami b. Hama bequeathed to him her estates on one evening. The mother of R. Amram the Pious possessed a bundle of deeds, etc. Concerning a gift in part of a sick person—in one respect it is equal to a gift by one in good health, etc. A sick person who has bequeathed all his estates to strangers, although made with a sudarium, if he was cured he may retract. If one bequeathed first to one and thereafter to another, etc., . 321–345

MISHNA *VIII.* If in the deed it was not mentioned that he was sick, and he claims that he was sick at the time of writing and had a right to retract. What kind of evidence is required, etc. It happened in the city of Bene Brack, that one sold the estate of his father and died; and his relatives complained that he was not of age when he died. What must be the age of one who has the right to sell the estates left him by his father? How is he to be considered during the nineteenth year—nineteen, which is still not of age, or twenty? There was one lad less than twenty, who had sold the estate of his father. If a lad of thirteen years and one day presented a gift to some one, his act is valid. If one divides his estates verbally, no matter if he was in good health or dangerously sick, according to R. Elazar to real estate title is given by money, etc. It happened with an inhabitant of the city of Mruni, who was in Jerusalem, that he possessed much valuable property which he desired to present to different persons, etc. If it happens that a sick person divides his estates verbally on the Sabbath, etc. Suppose a house falls upon A and his father or on any persons, that one of them has to be bequeather and the other inheritor, and it is not known who dies first. If a son has sold his share of the inheritance of his father to some one, and dies while the father was still alive, and thereafter his father died, the son of the seller has a right to take away the goods from the buyer. And this is a complicated case in the law of money matters. A son inherits from his mother when he is already in the grave, so that his brothers from his father's side should inherit from him, ... 345–357

CHAPTER X.

MISHNAS *I.* TO *V.* A simple get (document) the witnesses must sign at the end of the contents. A folded one, however, the witnesses must sign outside, etc. In what place should the witnesses sign a folding document? If the signatures of the witnesses were separated by a space of two lines from the writing, the document is invalid; is it meant with their usual space or without? There was a folding document which came before Rabbi, and he said: "There is no date to it," etc. All must be done as is customary in the country. If there was only one witness to a simple, etc. If in the document was written, "hundred zuz," which make twenty selas, etc. If on the top of the document was written "a mana," and on the bottom "two hundred zuz," or *vice versa*, etc. There was a document in which was written, "six hundred and a zuz," etc. There was a toll-master of a bridge who was a

Jew who said to Abayi: "Let the master show me his signature," etc. A divorce may be written by the court for a husband in the absence of his wife—the husband must pay the fees. Documents of arbitrating and all other acts of mediating by the court must not be written unless both parties are present—at the expense of both. There was a receipt approved by Jeremiah b. Abba. However, the same woman came into his court to claim her marriage contract several years later, etc. If one has paid a part of his debt, and deposited his document with some one. If it happened to one that a promissory note became erased, he must find witnesses. The approval must be written: "We three, E, F, G, the undersigned, were sitting together, and before us was brought by A, the son of B, an erased note," etc. If one comes before the court claiming that he has lost a promissory note from so and so, etc. If one has presented a gift to his neighbor by a deed, if the deed was returned by the beneficiary the gift is considered returned. The following is the order of claims before the court. The lender comes to the court to complain that the borrower does not pay his debt, etc. Concerning deeds, they may write another one without mentioning the responsibility of the seller for the estate, etc. There was a woman who gave money to one that he might buy estates for her, etc. If one came to claim a field saying that he possesses a deed, and also that it was in his possession the years of hazakah, etc. If there was any forgery in the document, or there were incompetent witnesses, the transferring is not considered, ... 357–379

MISHNAS *VI.* TO *IX.* If one has paid a part of his debt, according to R. Jehudah the promissory note must be changed. According to R. Jose, the lender has to give a receipt for the amount paid. The Halakha prevails neither with R. Jehudah nor with R. Jose, etc. If the document was written at the date used by the government, and such a date fell on a Sabbath or on the Day of Atonement, etc. It happened with R. Itz'hak b. Joseph, who had money with R. Abba, etc. Abba said to his scribe: "When it shall happen that you have to write a document with a later date, you must write as follows: This document was postdated by us for a certain reason," etc. If one holds a promissory note for a hundred zuz, and requests that it shall be rewritten in two notes each of fifty zuz, etc. If there were two brothers, one rich and one poor, and they inherited from their father a bath-house, or an olive-press house, if for business they must share equally; but if for private use, etc. If there are two persons who bear one and the same name, they cannot give promissory notes to each other, nor to any of the inhabitants. If a promissory note was paid, etc. If one (while struggling with death) says to his son: "A promissory note among the notes I possess is paid, but I do not remember which," etc. If one made a loan to his neighbor through a surety, he must not collect first from the surety, etc. Whether a surety has to pay or not, R. Jehudah and R. Jose differ, etc. If the surety said: "Lend to this man, and I am the surety," etc. If the expression was, "Give to him, and I will return you," then has the lender nothing to do with the borrower. There was a judge who transferred the estate of the borrower to the lender, before the lender had demanded his money from the borrower, etc. There was a surety for orphans who had paid the lender before he notified the orphans. If one was put under the ban because he declined to pay his debts. If the promissory

note of the deceased was in the hands of the surety, who claims to have paid the lender, etc. There was a surety for a deceased debtor to a heathen, who paid the heathen before he had demanded his debt from the orphans. If one made himself surety to a woman for a marriage contract, etc. A sick person who has consecrated all his estates, and at the same time said: "So and so has a mana with me," he may be trusted. A sick person who said: "A has a mana with me," and thereafter the orphans claimed that they have paid, they are to be trusted. If one borrows money on a promissory note, the lender has a right to collect from encumbered estates. If it happen that a creditor sees his debtor in the market, grapples him by the throat, and one passes by and says, "Leave him alone, I will pay," he is nevertheless free, because the loan was made not upon his surety. Biblically there is no difference between a loan on a document and by word of mouth, and it should be collected from encumbered estates. A verbal loan is not collectible—neither from heirs nor from buyers. If the surety signed before the signatures, it may be collected from encumbered estates. Only a surety in the presence of the court is free from a sudarium, but all others are not,

TRACT BABA BATHRA (LAST GATE).

(PART II.)

CHAPTER VI.

RULES AND REGULATIONS CONCERNING THE SALE OF SEEDS WHICH BECOME SPOILED, THE QUANTITY OF DUST WHICH MAY OR MAY NOT BE ACCEPTED IN THE MEASURES OF GRAIN AND FRUIT, AND WINE WHICH BECOMES SOUR AFTER SALE BEFORE DELIVERY. —CONCERNING CONTRACTORS FOR HOUSES AND STABLES, WELLS AND GARDENS SITUATED IN NEIGHBORS' PROPERTIES OR PUBLIC THOROUGHFARES IN PRIVATE GROUND, AND CONCERNING GRAVES AND CAVES FOR BURYING.

MISHNA *I.*: If one sold fruit or grain (without any stipulation), and the buyer sowed it but it did not sprout, even if this were seed of flax, the seller is not responsible. R. Simeon b. Gamaliel, however, maintains that if he sold seeds for gardens, which could not be used for eating, the seller is responsible.

GEMARA: It was taught: If one sold an ox, and thereafter it was found it was a goring one, the sale is void according to Rabh. Samuel, however, said: The seller may say: "I sold it to you for slaughtering." Let us see: If the buyer was one of those that buy for slaughtering (*e.g.*, a butcher), why then should the sale be void according to Rabh? And if he was one who buys for working purposes (*e.g.*, a farmer), why should the sale be valid according to Samuel? It treats of one who buys for both purposes (*e.g.*, if he was both a farmer and a butcher). But even then, let us see the amount he paid for it, from which we can judge whether he bought for slaughtering or for work. It treats of where the meat has increased in price to the extent of the value of an ox for working. If so, what is the difference (the buyer gets the full value for his

money in any case)? The difference is, if the trouble of slaughtering and selling the meat should be taken into consideration (according to Rabh it should, and therefore the sale is void; and according to Samuel it should not). Again, let us see how was the case. If the seller has no cash to return, why, according to Rabh, should the sale be void, so that the buyer has to return the ox? Let him keep the ox for his money; as people say: "If you keep something in hand belonging to your debtor, even if it is bran, take the trouble to make money by it." It means when the seller is not lacking in cash. According to Rabh, the sale is void because the majority must always be taken into consideration, and the majority of cattle-buyers are traders; and Samuel maintains that only in prohibitory laws the majority is to be taken into consideration, but not in money matters.

Come and hear an objection from the following (First Gate, V., Mishna I.): "Should an ox gore a cow and the new-born calf be found dead at her side, and it be not known," etc. (see there, end of the Mishna, p. 106). Now, according to the theory of our Mishna, the decision of the cited Mishna would not be correct, as the majority of cattle should be taken into consideration, which conceive and bring forth living offspring. Hence the dead one found at her side is dead because of the goring. Why, then, is it considered doubtful there? The doubt was, if the ox gored the cow in front, so that the premature birth took place because of terror before goring, or if the cow was gored in the back, and the premature birth was occasioned by the goring, and therefore the extent of the injury is considered doubtful. And there is a rule that such be divided.

Shall we assume that the point of difference between Rabh and Samuel is the same as that in which the Tanaim of the following Boraitha differ? "If an ox was pasturing and another one was found killed at his side, although investigation shows that the death occurred from goring, and the pasturing ox was vicious in goring, or the death occurred from biting, and the pasturing ox was vicious in biting, it is still uncertain that this ox has gored or bitten the other." R. Aha, however, said: If there was found a camel killed at the side of a biting camel, although the latter was not yet vicious, it must be taken

for a certainty that he killed the other. The schoolmen thought majority and hazakah * identical; for as a goring or a biting animal has a hazakah to gore, bite, and kill, it is to be taken for a certainty that the gored or bitten one found at his side was killed by him, and the same is the case with the majority.

Is it not to assume that Rabh holds with R. Aha, and Samuel with the first Tana?

Nay! Rabh may say: My decision is correct, even in accordance with the first Tana of the cited Boraitha, as the reason of his decision is not majority, but hazakah—*i.e.*, there was not a majority of vicious oxen, but one, which had a habit (hazakah) of goring or biting, as hazakah and majority are not identical; but if there should be a majority, it would be taken into consideration. And, also, Samuel may say: My decision is correct, even in accordance with R. Aha, as his reason is the habit (hazakah) of that animal which was found near, and a majority would not be taken into consideration.

Come and hear an objection from our Mishna, which states that the seller is not responsible, even for seeds of flax. Does not the term "even" mean, although the majority is for sowing, and nevertheless it is not taken into consideration? Hence it opposes Rabh? In this point the Tanaim of the following Boraitha differ: "If one sold fruit, and the buyer has sown it but it did not sprout, if it was garden seed, which could not be used for eating, he is responsible; but if it was seed of flax, he is not." R. Jose, however, said that the seller has to return to the buyer the value of the seed, as the majority buy it for sowing only. The sages, however, answered him: There are many who buy it for other purposes.

But who of the Tanaim in this Boraitha hold not the theory of majority? Shall we assume that it means R. Jose; and the sages answered *him* that there are many people who buy seeds, etc.? Then all of them hold the theory of majority, but one takes into consideration the majority of the seed (*i.e.*, the majority of seed which is bought for sowing, and the other the majority of men)? Therefore we must say that it means, the difference of opinion between the first Tana and R. Jose, or the difference of opinion between the first Tana and the sages,

* The translation of "hazakah" is chiefly "occupancy"; however, this term is applicable to everything which is the habit of persons, animals, etc.

who answered *him* (*i.e.*, the statement in the Boraitha, "and they said to him," means the first Tana, not R. Jose).

The rabbis taught: "The seller has to return to the buyer the value of the seed, but not the expenses for ploughing, sowing, etc.; according to others, however, the expenses also." Who are the others? Said R. Hisda: R. Simeon b. Gamaliel. Which R. Simeon b. Gamaliel? Shall we assume from our Mishna, which states that for seeds which could not be used for eating, he is responsible, and from the first Tana's statement, that the seller is not responsible for seeds of flax, that it is to be inferred for seeds of flax only, but for other seeds which cannot be used for eating, the Tana is also of the opinion that the seller is responsible? Then they do not differ at all. Therefore it must be said that they differ in the expenses, the first Tana holding the seller must return the value of the seeds only, and R. Simeon all the expenses also (and so R. Hisda means R. Simeon of our Mishna). But perhaps the reverse is the case—R. Simeon holds the value of the seeds only, while the first Tana holds the expenses also? This presents no difficulty; for as usual the second Tana adds something. But perhaps the entire Mishna is in acordance with R. Simeon and is not complete, but should read thus: If one sells fruits and they were sown and did not sprout, even if they were seeds of flax, he is not responsible. Such is the decree of R. Simeon b. Gamaliel, who holds that only for garden seeds that cannot be used for eating the seller is responsible. Therefore we must say that R. Hisda means R. Simeon b. Gamaliel of the following Boraitha: "If one delivered wheat for grinding of fine meal, but the miller did not properly grind it, but made it into bruised grain or bran; or if meal were delivered to a baker and he did not bake it properly, but when he took it out it fell to pieces; or if an ox were delivered to a slaughterer, and he made it illegal, each of these persons is responsible, as they are considered bailees for hire." R. Simeon b. Gamaliel said, that they not only have to pay the damages, but also for the shame of the owner in the eyes of the guests who were invited to the meal, as well as for the shame of the guests themselves; and so the same R. Simeon used to say: There was a great custom in Jerusalem, if one ordered a banquet for guests, and the host spoiled it, he had to pay for his own shame, and for the shame

of the guests. There was also another great custom in Jerusalem: "a flag was put at the door where a banquet was to be given, and the invited guests had to enter only when the flag was still at the door, but when it was taken off they were not to enter any more."

MISHNA *II.*: If one buys fruit, he has to accept a quarter of a kabh of dust on a saah; of dry figs, he has to accept ten wormy ones in a hundred; on a cellar of wine, he must accept ten harsh ones on each hundred; if he sells him earthen jugs made in Sharon he has to accept ten unglazed ones on each hundred.

GEMARA: R. K'tina taught: By a quarter of a kabh of dust is meant peas, but not earth proper. Is that so? Did not Rabba b. Hyya Ktuspha'h say in the name of Rabba: If one has cleaned off little stones from the barn of his neighbor he has to pay him the value of wheat (*i.e.*, as if they were there, he may put them in the measure, but to put them intentionally he is not allowed)? Peas, he has to accept a quarter of a kabh on a saah, but dust he has also to accept, although a less quantity. You say less than a quarter of dust, but did not the following Boraitha state: "If one sells wheat, he has to accept a quarter of a kabh of peas on a saah; if barley, a quarter of chaff on a saah; and if lentils, a quarter of dust." Is it not to assume that a quarter of dust is to be accepted for wheat and barley also? With lentils it is different, because they are not cut, but torn out from earth, and therefore usually a great deal of dust remains with them, which is not the case with wheat and barley; but if it is so, infer from this that for wheat and barley no dust must be accepted at all, while it is stated above that less than a kabh is to be accepted? Nay, from the statement that for lentils he has to accept a quarter nothing is to be inferred; this being stated, lest one say because there is usually much dust more than this quantity is to be accepted, it comes to teach us that it is not so.

R. Huna said: If the buyer has found more than the above prescribed quantity and sieves it, he may sieve the whole quantity he bought, without leaving any dust at all, and the seller has to fill the measure without allowing for the prescribed quantity. According to some it is the strict law, as usually one gives his money for clean fruit, but if for a trifle of dust, as

much as a quarter of a kabh on a saah, the buyer is not very particular and does not take the trouble to sieve it; but in our case, when he is compelled to trouble himself with sieving, he may make the whole fruit extremely clean; and according to others, it is a fine, as usually no more than a quarter of a kabh ought to be found in a saah, and when there was found more, it is presumed that the seller put it in intentionally, and therefore he is fined by the rabbis.

Come and hear an objection from the following Boraitha: "If a planter undertakes to plant a field with fruit trees, the owner of it must accept empty space for ten trees on each hundred, but if, however, it was found empty for more than this, he has to plant trees on the whole empty space." Hence is R. Huna's above statement law? Said R. Huna b. R. Jehoshua: This is not a support to R. Huna, as an empty place for more than ten trees is to be considered as a separate field, and the planter who undertook to plant the owner's fields is to be considered as if he had to begin the planting in this empty field, and therefore he has to plant the whole field, which case is not similar to that of R. Huna.

"*If he sold a cellar of wine,*" etc. Let us see how is the case. Whether the seller said to the buyer, "I sell you *a* cellar of wine" or "*this* cellar of wine," it is a difficulty from the following Boraitha. "If he said 'I sell you *a* cellar of wine,' all of it must be good; if '*this* cellar of wine,' he must give him wine which is sold in the retail stores; but if he said, 'I sell you *this* cellar,' even if it was found to be all vinegar, the sale is valid." Our Mishna speaks of the case wherein the seller said, "*a* cellar of wine," and there is no contradiction of the cited Boraitha as it should read, and the buyer has to accept the ten spoiled ones in the hundred. But has not R. Hyya taught: If one sells a barrel of wine, he must give the buyer all good wine? With one barrel it is different, as a barrel contains only one kind of wine; but has not R. Z'bid in the name of the school of R. Ossiah taught in "a cellar of wine" all must be good, in "the cellar of wine" the seller must give the buyer all good wine, but the latter must accept ten bad in the hundred; and this is the word *Outzar* ("treasure of wine") which the sages have taught in our Mishna? Therefore it must be said that our Mishna treats of the case wherein the seller said

" this cellar," and the contradiction from the above Boraitha in the case, if " this cellar," presents no difficulty, as R. Z'bid says, if the seller told the buyer, " I sell you wine for keeping," and the Boraitha says the words " for keeping " were not said, and therefore (the Halakha prevails thus) if the seller said, " a cellar of wine for keeping," all of it must be good; if " *this* cellar of wine for keeping," the buyer must accept ten in the hundred; if " *this* cellar of wine," without the addition " for keeping," the seller may give the buyer wine that is sold in retail stores.

The schoolmen propounded a question; How is it if the seller said, " a cellar of wine," without the addition " for keeping "? On this point R. Aha and Rabhina differ. According to one the buyer has to accept ten in the hundred, and according to the other he has not, the one who says " he must accept " inferring it from R. Z'bid, who states in the case of " a cellar of wine," all of it must be good, and it was explained above that he speaks of the case in which the seller added " for keeping," from which it is to be inferred that if these words were not added, the buyer must accept; and the other, who says the buyer must not, infers from the above Boraitha, which states in the case of " a cellar of wine " all of it must be good; and it was explained above that the Boraitha treats of the case wherein " for keeping " was not said. But to him who infers from R. Z'bid, is not the Boraitha contradictory? He may say the Boraitha is not completed, but should read thus: This is said, if the seller told the buyer " for keeping," but if not, the buyer must accept, and if the seller said " this cellar of wine " without any addition, he may give the buyer wine which is sold in the stores; but to him who infers from the Boraitha, is not R. Z'bid contradictory who, as explained, said that the seller told the buyer the wine was " for keeping "? He may say that the same is the case if the seller did not say " for keeping," and the above explanation was only in order that the Boraitha and R. Z'bid might not contradict each other; in reality, however, R. Z'bid does not agree with the Boraitha.

R. Jehudah said: On wine which is sold in stores the usual benediction may be made. (The benediction is, " Blessed be Thou the Lord our God King of the Universe who hast created the products of the vine,") and R. Jehudah means to say that

although the wine in stores is usually bad, it is still called the product of the vine. R. Hisda, however, said: What have we to do with such a wine (*i.e.*, how can such wine be called a product of the vine)?

An objection was raised: In the case of moulded bread and sour wine, and any dish of which the appearance is spoiled, the benediction should be "That all is created by His words" (hence it contradicts R. Jehudah). Said R. Z'bid: R. Jehudah admits that over wine made of kernels, which is usually sold on the corners of streets, the right benediction may be said. Said Abayi to R. Joseph: "There is R. Jehudah, and there is R. Hisda, each of them with his opinion; I would like to know how is yours, master?" And he answered, "I am aware of the following Boraitha: 'If one examine a barrel of wine for the purpose of separating heave-offering from it, for all others, and he did so for a month or two, and thereafter it was found that the wine turned into vinegar, three days is considered certain, and further on doubtful.' How is this to be understood? Said R. Johanan thus: The first three days from the examination it is to be considered certainly wine, and thereafter it is to be considered doubtful. Why so? Because usually wine becomes sour from the top, and when he tasted it, it was not sour, and if you say it had become sour immediately after he tasted it, the smell only was vinegar-like, but the taste still of wine (as the sages had a tradition that less than three days from the beginning it becomes not vinegar) and such is considered wine. R. Jehoshua b. Levi, however, said that all he separated in the last three days is certainly vinegar, but previous to that it is doubtful. Why so? Because usually wine begins to turn sour from the bottom, and maybe when he tasted it it was sour already, of which he was not aware; and even should I admit that wine begins to turn sour from the top, my decision is still correct as it may be that it began to turn sour immediately after being tasted, and I hold that if it smells of vinegar, though the taste is still of wine, it must be considered vinegar" (hence according to R. Jehoshua b. Levi the wine which is sold in stores is not considered wine at all, and according to R. Johanan it is considered wine).

The sages of the South taught in the name of R. Jehoshua b. Levi thus: The first three days it should be considered as wine,

the last three days as vinegar, and in the days between as doubtful. But does this statement not contradict itself? The first three days it certainly is wine, hence if the smell is of vinegar and the taste of wine, it is considered wine; and thereafter they said, the last three days it is certainly vinegar, from which it is to be inferred that if the smell is of vinegar and the taste of wine, it is considered vinegar. The case was that it was found wholly strong vinegar, and it is stated above that it takes no less than three days after it turns sour to become wholly vinegar; hence it is to be supposed that in the last three days it was already vinegar. However, according to which of these two was the conclusion of R. Joseph? In this, also, R. Mari and R. Z'bid differ, one saying that his conclusion was in accordance with R. Johanan, and the other saying it was in accordance with R. Jehoshua b. Levi.

It was taught: If one sells a barrel of wine and it turns sour, according to Rabh the first three days it is considered under the control of the seller, and thereafter "it is considered under the control of the buyer." Samuel, however, maintains that the seller is not responsible even when it was still in his barrel, as this is to be considered the fate of the buyer.

R. Joseph acted in accordance with Rabh concerning beer of dates, and according to Samuel with wine, the Halakha, according to Samuel, however, prevails in every respect.*

MISHNA *III.*: If one sells wine and it turns sour, the seller is not responsible; if, however, it was known that the nature of his wine was to turn sour (and the buyer was not aware of it), the sale is void. If he said, "I sell you wine, prepared with spices, in good order," the wine must remain in good order until the feast of Pentecost. (Afterward it may become spoiled by heat.) If the seller sold the buyer old wine, it must be from last year; and if he said "very old," it must be aged not less than three years.

GEMARA: Said R. Jose b. Hanina: All this is said of the case wherein it was delivered to the buyer in his own jugs; but if it was placed in the jugs of the seller, the buyer might say: "Here are your jugs and your wine." Why then may not

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* The text treats concerning the benedictions on wine, beer, etc., for which the proper place is the Tract Benediction, and to which it will be transferred

the seller claim: You ought not to keep it so long? It means that while selling, the seller told the buyer "for keeping." But what compels R. Jose to such a difficult interpretation, in which the jugs were the buyer's, and the seller says "for keeping"? Why is it not simply said that the jugs were the seller's and he said nothing? Said Rabha: It is because the further statement of the Mishna, "that if it was known that the nature of the seller's wine was to turn sour the sale is void" was a difficulty to him. Why, then, let the seller claim he ought not to keep it so long? We must then say, that the Mishna treats of the case wherein the seller told the buyer "for keeping" (he therefore interpreted the whole Mishna, that such was the stipulation), and infer from this that so it is. He, however, differs with R. Hyya b. Joseph, who said that the fate of one causes the spoiling of his wine; as it is written [Habakkuk, ii. 5]: "And even the wine of a proud man rebels."

Said R. Mari: If one is proud, he is not tolerated even by his family, as the above verse reads "the proud man whose house will not stand," which is to say that he is not tolerated by his household. R. Jehudah in the name of Rabh said: A commoner who disguises himself in the garment of a scholar, cannot enter into the habitation of the Holy One, blessed be He; and this is deduced from an analogy of expression, *Nvie*, which is to be found in Ex. xv. 13. The Hebrew expression in the above cited verse is also *Y'nvie* (literally, "dwelling," "inhabit").

Rabha said: "If one sells a barrel of wine to a storekeeper (with the stipulation that he shall sell it at retail and then pay the owner), and a half or a third of the wine turns sour, the law is that the seller must accept the return of his wine; and this is said only in case the faucet was not changed by the storekeeper, but if it was changed and placed near to yeast, there is no responsibility, and there is also no responsibility if the storekeeper kept the wine over the market day." He said again: "If one has accepted wine for half interest, with the intention of taking it to the suburb of Dwulchpht (where usually wine is dear), and by the time it reached there the price was lowered, the law is that the owner has to accept the return of the wine." The schoolmen propounded a question: How is it when the same was vinegar? Said R. Hillel to R. Ashi:

When we were at R. Kahana's he said to us, the same is the case with vinegar, as he agrees with R. Jose b. Hanina's statement above.

"*Old wine*," etc. A Boraitha in addition to our Mishna states that if it was said, "very old wine, it must keep its good quality until the feast of tabernacle in the third year."

MISHNA *IV.*: If one sells to one a place for the purpose of building a wedding-house for his son or a widow-house for his daughter, and the same is the case if a contractor undertakes to build such for him, the size must be not less than four ells in length by six in breadth; such is the decree of R. Aqiba. R. Ishmael, however, maintains that this is the size of a stable. If one wishes to build a stable for cattle, he builds it four by six. The smallest house is no less than six by eight, a large one eight by ten, and a triclinum (restaurant) ten by ten, and the height must be a half of its length and of its width. An example of this, said R. Simeon b. Gamaliel, was the building of the Temple.

GEMARA: Why does the Mishna state "a wedding-house for his son and a widow-house for his daughter"? Let it state a wedding or a widow house for his son or daughter. The Mishna incidentally teaches us that it is not a good custom for a son-in-law to dwell with his father-in-law, as it is written in the book of Ben Sira: "I have weighed everything on the scale and did not find a thing to be lighter than bran; however, a groom who resides in the house of his father-in-law is lighter than bran, and still lighter than he is an invited guest who brings with him an uninvited companion, and still lighter is the one who answers before he has heard thoroughly the question, as it is written [Prov. xviii. 13]: 'When one returneth an answer before he understandeth (the question), it is a folly unto him and a shame.'"

"*If one wishes to build a stable*," etc. Who said this? According to some, R. Aqiba himself, and he said so; and although this is the size of a stable for cattle, it nevertheless happens that human beings live in such a building (and as the seller or the contractor did not stipulate the size, the minimum may be taken). Others say R. Ishmael taught this saying: That if one wishes to build a stable, it is the size of four by six.

"*Triclinum*," etc. There is a Boraitha: For a *quantir*,

twelve ells square is needed. What does it mean? A fore yard?

"*An example of this,*" etc. Who taught this? Some say R. Simeon b. Gamaliel, and it should read thus: Whence is this deduced? Said R. Simeon b. Gamaliel: All must be judged according to the building of the Temple, and some say that the first Tana taught an example of it (and he was about to finish his statement with "the building of the Temple," but R. Simeon b. Gamaliel interrupted him saying:) Do you want to compare all common buildings with the building of the Temple; do all people build such buildings?

We have learned in a Boraitha: Anonymous teachers say the height must be not less than the length of the crossbeams of the ceiling. But why not say, simply, the height must be as the width? If you wish, it may be said that usually a house is wider at the top than at the bottom; and if you wish, it may be said that, because the ends of the beams are placed in the enclosures of the wall, they are longer than the width of the house.

MISHNA *V.*: If one possesses a well, situated on the other side of his neighbor's house (by inheritance, or even bought from him with a path), so that when water is needed he must pass through the house, he may enter and leave at the time people usually enter and leave. However, he is not allowed to take his cattle to the well, but he has to take water for them outside of the house and water them. The owner of the well, as well as the owner of the house, has a right to put a lock on it.

GEMARA: A lock on what? Said R. Johanan: Both locks may be put on the well. It is right that the owner of the well should put a lock on his well, so that no one can use the water; but for what purpose should the owner of the *house* put a lock on it? Said R. Elazar: Lest his neighbor, while passing his house to the well in his absence, should remain alone with his wife.

MISHNA *VI.*: If one has a garden inside of his neighbor's garden, he may enter and leave only when people are wont to do so. He must not take buyers with him to his garden, and he also has no right to pass through his neighbor's garden for the purpose of entering another field conjoining this one, when he has no business in his own garden; and only the owner of

the outside garden has a right to sow the path. If, however, a path was designated to him by court, on the side, with the consent of both parties, then he may enter and leave whenever he pleases and may also take with him buyers; however, the right to pass through to another field is not given, and neither of them has the right to sow the path.

GEMARA: R. Jehudah in the name of Samuel said: If one says, "I sell you a place of one ell for digging a well to water your dry land," it must contain the width of two ells, and he also has to add him two ells from his field to the edges of the well, on which to erect walls to prevent the overflow of the water; and if he said, "I sell you an ell for making a sewer," it must be one ell wide and one-half ell to each edge. But who has a right to sow the edges (while the walls were not as yet made)? R. Jehudah in the name of Samuel said: The owner of the field; and R. Nhaman in the name of Samuel said: The owner of the field may plant trees there, but not sow it, as by sowing he harms the water.

R. Jehudah in the name of Samuel said again: If the walls of a channel fall, the owner of it may repair it from the material of the field upon which the walls were placed; as certainly they fall on the same field where they were placed (but the material was scattered by the wind all over the field). R. Papa, however, opposed, saying that the owner of the field may claim that the water of "your well has underwashed the material and caused it to fall"; therefore he gave another reason, that such a stipulation must have been in existence when he hired that place, for otherwise he would not have wasted his money.

MISHNA *VII.*: If there was a public thoroughfare through one's field and he took it for himself and designated another one at the side of his field, what he has given is considered the public's, and to that which he took for himself he does not acquire title. If one sells a path in his field for a private thoroughfare it must be four ells, for the public it must be no less than sixteen. A way for the government has no limit. The way for carrying a corpse to the grave has also no limit; however, the space where the people stand for condoling was determined by the judges of Ziboras of a space where four kabhs may be sown.

GEMARA: Why should he not acquire title to that thor-

oughfare he took for himself, when he designated another one for the public; let him take a stick with which to drive off intruders, or do you want to infer from this that one cannot take the law in his own hands, even when he suffered damage? Said R. Zebid in the name of Rabha: It is to be feared that if this would be allowed, one would give to the public a crooked way; but R. Mesharshia in the name of Rabha said that our Mishna treats of a case wherein the owner of the field has designated such. R. Ashi, however, maintains that a way which is placed at one side is considered crooked, because it is near to one who resides near to this side, while it is far to him who resides on the other side, (and therefore he does not acquire title) to that which he took. But let him say to the public, "take your way and return mine" (and the Mishna states what he has given is lost). It is in accordance with R. Eliezer of the following Boraitha: "R. Jehudah said in the name of R. Eliezer, if the public has chosen a way for itself, what was done remains." But may the public be robbers, according to R. Eliezer? Said R. Gid'l in the name of Rabh: He speaks in case the public has lost a way in this field (*i.e.*, some time ago there was a thoroughfare which afterwards was lost). If so, why then said Rabba b. R. Huna in the name of Rabh that the Halakha does not prevail with R. Eliezer? The one who has taught this statement was not aware of the other statement (*i.e.*, R. Gid'l does not approve the statement of Rabba b. R. Huna in the name of Rabh). But according to Rabba b. R. Huna, what is the reason of our Mishna's statement, that of R. Jehuda, who said above (p. 145) that a path of which the public took charge must not be spoiled? By which act did the public acquire title to the thoroughfare, according to R. Eliezer? By passing, as we have learned in the following Boraitha: If one passed (in an ownerless field) on its length and breadth he acquired title to the place he has passed, so is the decree of R. Eliezer. The sages, however, maintain that passing has no effect at all, and title is not acquired unless he makes a hazakah. Said R. Elazar: The reason of R. Eliezer is the following verse [Genesis, xiii. 17]: "Arise, walk through the land in the length of it and in the breadth of it, for unto thee I will give it." The sages say this cannot be taken for a support, however, as Abraham was beloved by Heaven, and it was said to him for

the purpose of making easier for his children the subjection of the land. Said R. Jose b. Hanina: The sages admit to R. Eliezer in case of a footpath between vineyards, because it was made for passing, title is also given by passing. When such a case came before R. Itz'hak b. Ami he decided that the plaintiff should get a footpath upon which he should be able to carry a bundle of branches on his shoulders, which in turning here and there should not touch the walls. But this is said in a case wherein the places for the walls are not yet designated; but if they were, the space should be given him, so as to put one foot after the other.

"*For a private*," etc. There is a Boraitha: Anonymous teachers say: "As much as an ass with its load could pass." The judges of the exile said: Two cubits and a half. And R. Huna said: The Halakha prevails with them. But did not R. Huna say elsewhere that the Halakha prevails with the anonymous teachers? The limit of both is "equal."

"*A public thoroughfare is sixteen ells.*" The rabbis taught: A private way is four ells, a way from one city to the other is eight ells, a public way is sixteen ells, and the way to the cities of refuge (Num. xxxv. 11) thirty-two. [Said R. Huna: Whence is this deduced? From the Scripture (Deut. xix. 3): "*The* way to *them*." It should be "a way," and the word "the" makes it double.] The way of the government has no limit, as the king has the right to erect partitions, houses, and no one has a right to prevent him, and the way for burying a corpse has no limit, because of the honor of the dead.*

MISHNA *VIII.*: If one sells a place for digging a grave, or an undertaker makes a grave for one, the inside of the cave must be four by six, and opening into it eight niches for coffins, three on each side and two at the top and bottom. The length of the niches is four ells, the height seven spans, and the width six. R. Simeon, however, said: The inside of the cave must be six by eight, the niches must be thirteen, four on each side, three on the upper side, and one on the right side of the door and one on the left. He also makes a fore yard at the mouth of the cave six ells square, as much as the coffin with its carrier needs. He also has to open to this fore yard two

* The continuation of the text about graves and condolence, etc., we have transferred to Tract Great Mourning, page 60.

caves from two sides. R. Simeon, however, said four to all its four sides. R. Simeon b. Gamaliel, however, maintains that all must be done according to the rock (*i.e.*, if the earth is soft more niches could be made, but if rocky the number must be limited accordingly).

GEMARA: The two niches which R. Simeon requires, one on the right side of the door, etc., how shall he dig them? If their length should be dug from the wall of the cave under the fore yard, then they will be trodden down; furthermore, there is a Mishna to the effect that one who stands in the yard of a grave is clean, but if the niches should be dug under the yard the one who stands above would not be clean. Said R. Jose b. R. Hanina: He made the niches like an upright bolt; *i.e.*, placed the bodies in an upright position. But did not R. Johanan say that asses are buried in like manner? According to him, the niches should be made in the corners. But then each of them would come in contact with the other. Said R. Ashi: If he makes those in the corners deeper (according to R. Simeon, who said that four niches must be on each side), if they were all equally dug they would come in contact. It must be said that he digs some of them deeper, and the same may be said here.* R. Huna b. R. Jehoshuah, however, maintains that he makes the niches crooked. (Says the Gemara:) This statement does not hold, as according to it he would have to make eight inches in the space of eleven and one-fifth ells, which is impossible.†

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* The text is so complicated here that the commentators have to make many illustrations, and after all the matter is hardly understood. However, according to our method we could not omit this, as it is essential from the historical point of view to know how these graves are made. We have done our best to make it intelligible.

† In the text are also mathematical calculations by the rule that one ell square contains one ell and two-fifths when crooked, which is not exactly correct. We have already mentioned this in a foot-note in Erubin, and therefore we have omitted the whole discussion here.

CHAPTER VII.

RULES AND REGULATIONS CONCERNING ROCKS AND PITS IN GROUND SOLD; THE QUANTITIES OF GREATER OR LESS MEASURE WHICH MAY OR MAY NOT VOID A SALE OF FIELDS, VILLAGES, ETC.

MISHNA *I.*: If one says: "I sell you earth the size where one kur can be sown, and there were crevices ten spans deep, or rocks ten spans high, they are not measured, but if less than that size they are measured. If, however, he said to him, "about the size of a kur," and there were crevices or rocks even more than the size of ten spans, they are measured.

GEMARA: Said R. Itz'hak: The statement of the Mishna about rocks and crevices which are measured when they are less than ten spans holds good only when all of them together do not measure four kabhs, but not if they do. Said R. Uqba b. Hama: Even then they are measured only when they are scattered within five kabhs space (but in less they are not measured); and R. Hyya b. Abba in the name of R. Johanan says that five kabhs do not suffice, and they are measured only when they are scattered within the greater part of the field, which is at least sixteen kabhs, as a kur is thirty kabhs; and R. Hyya b. Abba himself questioned: How is the law according (to R. Johanan's theory) if the greater part of the rocks in question were scattered within the smaller part of the field, and the smaller part of them within the larger part of the field (and if altogether they measured four kabhs)? These questions are not decided.*

There is a Boraitha: "If there were a single rock (but it bears a separate name; *e.g.*, 'the west rock') even if of less than ten spans, it is not measured; and also if the rock were placed

* In the text are some other questions: If the rocks were placed round, or square, etc.; and these need many illustrations, and all remain at last undecided. As they are of no importance, we have omitted them.

near to the boundary, whatever size it may be it is not measured." *

MISHNA *II.*: "I sell you earth of the size wherein a kur can be sown, measured with a line." If there were a trifle less, he may deduct; if a trifle more, the buyer has to return it. If, however, the seller says "about this size, a little more or less," even if there were less than a quarter of a kabh on each saah, the sale is valid; but if it were more than that size, an account must be taken. In case the buyer has to make return, it shall be in money; however, if he wishes to return him land, he may do so. And why was it said that the buyer should return the seller money? To favor the seller, so that if there were a trifle more the buyer should not have the right to return him this trifle, which the seller could not use; but if there were a kabh and a half more than the prescribed size, it means in the case of nine kabhs of land in a field and a half kabh in a garden, and according to R. Aqiba even a quarter of a kabh, then the buyer may return the land, and not only the land which is in excess of the prescribed size, but even that of this prescribed size itself is to be returned with the other.

GEMARA: The schoolmen propounded a question: If the seller said "the size of a kur," without any addition, how is the law? Come and hear. If the seller says, "I sell you an estate the size of a kur," or "about the size of a kur, a little less or more, I sell you," and thereafter it were found a quarter of a kabh less or more to a saah, the sale is valid. Hence we see that even if he does not add to the words "the size of a kur," it is the same as if he would say "about." Nay, the Boraitha is to be explained thus: The last part of the Boraitha explains the first part. If one says, "I sell you of the size of a kur," "about" is to be understood in case he should add a trifle less or more. R. Ashi objected: If this were so, why the repetition "I sell you, I sell you"? Therefore the Boraitha is to be explained as above, that the size of a kur means "about," and so it is.

"*It shall be in money.*" We see from this that the advantage of the seller and not the buyer is taken into consideration; but

* The text contains questions of no importance—*e.g.*, if the rocks were placed round, crooked, etc.—which remain undecided. We have therefore omitted the whole discussion.

valid? If, however, the estate is larger, the court compels both the seller to sell and the buyer to buy; hence we see that the advantage of both is taken into consideration? (*I.e.*, that even have we not learned in the following Boraitha: If there were less or more than seven kabhs and a half on a kur, the sale is if the seller insists that the excess should be returned to him, he is not to be listened to if it is an advantage for the buyer to have it.) The Boraitha treats that at the time it was found over the prescribed size, the estate was lower in price and the seller willing to sell. Therefore we say to the buyer, "You may reckon it at the existing price," and the same is said to the seller, "If you do not wish the estate to be returned to you, you must accept the existing price." But have we not learned in another Boraitha that if the buyer compensates the seller, he must reckon at the previous rate? That Boraitha speaks that when the reverse was the case, the price was low at the time of the sale and became higher after it was known that there was an excess over the prescribed size.

"*It means in the case of nine kabhs,*" etc. Said R. Huna: This applies even in a valley which is of more than ten kurs. R. Na'hman, however, says seven and a half to each kur; but if there were a kabh and a half more (which counts nine kabhs) even to one kur, all must be returned, even if to the other kurs the addition were not over the prescribed size. Rabha objected R. Na'hman from our Mishna, which states that if he left nine kabhs in a field, etc. Does not the Mishna mean at least two kurs as the size of the usual field? Nay, it means one kur. Farther on, in a garden, a half of a kabh is given as the minimum of excess. Does it not mean at least two saahs, as usually a garden is called of that size? Nay, it means one saah, and according to R. Aqiba one quarter. Does it not mean, if the garden was a saah? Nay, it means if it was half a saah. R. Ashi questioned: If one sold a field, and afterwards, but before the money was paid, it became a garden, and there were found more than a quarter to a saah, but it should not reach the size of nine kabhs or *vice versa*, how should the prescribed size be reckoned—as that of a field or that of a garden? This question remains undecided.

There is a Boraitha: "If the estate over the prescribed size sold was conjoined with the other estate of the seller, even if

that were but a trifle, the buyer has to return the seller the estate." R. Ashi questioned: How is the law if there were a well between this estate sold and the other estate of the seller, a channel, a public thoroughfare, or a row of trees, should these constitute lines of demarcation or not? This question remains undecided.

"*And not only the land which is in excess,*" etc. How is this to be understood? Taught Rabhin b. R. Na'hman: Not only that which was over the prescribed size the buyer returns the seller, but all the quarters to each kur, although the rest be not over the prescribed size, he must return.

MISHNA *III.*: "I sell you the estate with a measurement, a trifle more or less." The last words, "more or less," nullify those preceding them. "I sell you a trifle more or less to be measured with a line." The last words here nullify the preceding ones (and the seller must give the purchaser a just measurement; so that if the land were in excess, the excess must be returned, and if less the seller must supply the deficiency), such is the decree of ben Nanas.

GEMARA: Said R. Abba b. Mamal in the name of Rabh: "The colleagues of ben Nanas differ with him." What came he to teach us? Have we not learned in the Middle Gate, p. 269, Mishna 8, that it happened in Ciphorius that one rented a bath-house for twelve golden dinars a year? The payment was to be one dinar monthly; and thereafter the year was made intercalary. When the case came before R. Simeon b. Gamaliel and R. Jose they decided that the payment for the intercalated time should be made at the same rate as for the ordinary time. If from that Mishna one says that the last words, "one dinar monthly," are to be interpreted as a retraction of the first words, "twelve a year," the last words, "a dinar monthly," may also be interpreted as explaining the former, "twelve a year" (over which the sages differed with ben Nanas); however, here, in that the last words cannot be interpreted as an explanation, but as a retraction of the former, the sages agree with him. He comes to teach us that they differ also in this case. R. Jehudah in the name of Samuel said: This which is taught in our Mishna is in the words of ben Nanas, but the sages say that the shorter expression must always have the greater weight (*i.e.*, "with a measurement" is shorter than "a

trifle less or more "), no matter whether the shorter phrase were said before or after the longer one. Says the Gemara: Shall we assume that with the expression "this" Samuel meant to say that he himself does not agree with him? Do not both Rabh and Samuel say (p. 188) that if one said "a kur for thirty selas," he may retract even at the last saah; and if he added each saah for one sela, to all which was measured title is acquired, which corresponds with the decision of ben Nanas? Therefore we must say that he meant to say "this," and I agree therewith. But is that so? Did not Samuel say (Middle Gate, p. 270): "The decision was so made . . ." but if they had appeared in the beginning, would it be entirely the owner's; and if in the end, the renter's? (This, at all events, cannot correspond with ben Nanas' decision.) Therefore it must be said again that by the word "this" he means that "I do not agree," and the reason of his decision in the case of each saah for selah is because that which was measured is considered already in his hands, and the same is the case with the rent for the intercalary month; if at the end of the month, it belongs to the renter, because it is already in his hand. R. Huna said: It was said in the college of Rabh: If one said: "I sell this to you for an *istra* a hundred *moahs*, he must give him a hundred moahs; but if he says a hundred moahs an istra he has to give him an istra although it is less in value than a hundred moahs."

What came he to teach us—that the last expression must be considered? Has not Rabh said this already concerning the case of the cited Mishna (page 270): "If I were there, I should give it to the owner of the house" (and that is because the last words were "a dinar monthly")? Lest one should say that in one case the last words ("hundred moahs," or *vice versa*) are to be considered as an explanation to the first words, he comes to teach us that it is not so.

MISHNA *IV.*: If one says, "I sell you this estate, the size of a kur, with its marks and boundaries;" and afterwards it were found that the size is less than stipulated—if it were less than a sixth of the whole size, the sale is valid; but if there were a sixth wanting, the buyer may deduct from the payment.

GEMARA: It was taught: R. Huna and R. Jehudah differ in the explanation of our Mishna. According to the former

the Mishna means that an exact sixth should be considered as less than a sixth, and the Mishna is to be explained thus: "With less than a sixth wanting, a sixth inclusive, the sale is valid." If, however, more than a sixth is wanting, it may be deducted. According to R. Jehudah the Mishna means that an exact sixth is to be considered as more, and it is to be explained thus: "With less than a sixth wanting the sale is valid; a sixth, however, or more wanting is to be deducted."

An objection was raised from the following Tosephtha: "With its marks and boundaries, and there was a sixth less or a sixth more, it parallels a case wherein the court appraises an estate, and the sale is valid." Now we know that in a case wherein the court appraises, if there were an error as to an exact sixth, it is considered as if it were more, and the appraisement is void; hence this contradicts R. Huna?. R. Huna may say that there is no contradiction, as the Tosephtha ends with the words "the sale is valid," and if this paralleled the case wherein the court appraises, how could it be valid in case there were more than a sixth? Does not the law provide that in the case of an error of the court in more than a sixth, the appraisement is void? It must be said then that it is parallel in one respect but not in the other; and it is to be explained thus: It parallels the case wherein the court appraises with an error of less than a sixth (which does not affect the appraisement), but it does not parallel the case in which the error of the court is of a sixth or more and affects the appraisement, which differs from our case, as the purchaser has only to deduct the money value of the deficiency, while the sale is still valid.*

R. Papa bought an estate from some one who told him that it measured the size of twenty saahs. After it was measured it was found that there were only fifteen; and the case came before Abayi, who decided that the sale was valid, because the seller had used the qualifying words "as you see its marks and boundaries." But have we not learned that if there were more than a sixth lacking its value is to be deducted, and here there is a fourth part? In the first case the condition is not known to the buyer before the sale; but in the latter case, as the condition was known to R. Papa and he saw it at the time he

* We are compelled to explain this in accordance with R. Gershom, as Rashbam's explanation is still more complicated.

bought, it must be supposed that he had considered and accepted it. Rejoined R. Papa: But did he not tell me that it measured twenty? He probably meant to say that "these fifteen are better than twenty elsewhere."

There is a Boraitha: R. Jose said: "Some brothers divided their inheritance by lot, and when to each of them his lot fell, all of them acquired title to their shares." Why so? Said R. Elazar: At the time the land of Israel was allotted to the tribes. But was there not also the Urim v'tumim, as it is said farther on that the high priest Elazar had on the Urim v'tumim, and then the lots were cast? Said R. Ashi: By their arrangement prior to allotment (whereby the estate was divided into shares of equal value) they had prepared themselves that each should acquire title to the share which the lot should cast for him, and therefore no other ceremony was necessary.

It was taught: To two brothers who had divided their inheritance between them came a third brother (of whose existence they were not previously aware). Their division is null and void according to Rabh. Samuel, however, maintains that each of the two must relinquish a third of his inheritance to the third brother (*e.g.*, they inherited six fields, and each of them must give one of these to the newcomer, so that the three brothers may have two fields apiece). Said Rabha to R. Na'hman: According to Rabh, who says that the division is null and void, it must be said he holds that since all of them did not share in the first division, the inheritance must be redivided. Would the same be the case with three partners, two of whom have divided (in the presence of three persons who are considered a Beth Din) in the absence of the third one, and there is a decision (Middle Gate, p. 74) that such holds good? The cases are dissimilar. In the latter case the partners divided the property into three shares, and as it was done in the presence of a Beth Din the division holds good; but in the former case the two brothers had divided the inheritance into two parts only, as they were unaware of the third brother's existence.

Said R. Papa to Abayi: According to Samuel's decision that the first division is valid, it must be said he holds that such an act, done in accordance with the law, must not be abrogated, although thereafter it appears that the brothers took more than belonged to them; but did not both Rabh and Samuel say: If

one says, "I sell you a kur for thirty selas," the seller may retract even at the last saah (above, p. 235)? (We see then that even when done in accordance with the law an act may still be abrogated.) There is, however, here a difference. The rabbis enacted that law to please both the seller and the buyer. (*I.e.*, in case the price should become lower, before the buyer has received the property, it is to his advantage to retract; and in case the price becomes higher, the advantage is for the seller. Hence this law is beneficial to both.)

It was taught: If brothers divided their inheritance and a creditor of their father came and took away the share of one of them, according to Rabh the former division is null and void. Samuel, however, said that such was this brother's lot, and it did not concern the other. R. Assi, however, maintains, not as Rabh, that the division is void, and they must divide the remainder, and not as Samuel, that it does not at all concern the other one; but that the second brother must surrender one quarter of his estate and a quarter of the money he has inherited. Rabh holds that the heirs, even after their division, are still to be considered heirs (hence if one of them has lost the property through his father's debt, he is still an heir to the remainder), while Samuel holds that at the time they divide they are considered buyers (each of them buying his share of his brother) without any security; and consequently each has no further concern after the division. R. Assi was doubtful whether they are to be considered heirs of buyers; therefore the half which ought to be taken from the one who did not suffer loss is considered doubtful money, and there is a rule that doubtful money is to be divided. Said R. Papa: The Halakha concerning the two cases, that of the third brother as well as that wherein the share of one was taken away by their father's creditor, prevails in accordance with Samuel, who says the division holds good, and it is for them to divide from their shares in payment of the debt. Amimar, however, said: The Halakha prevails in accordance with Rabh, who said that the division is void and the property must be redivided, and so the Halakha prevails.

The rabbis taught: If there are three who have qualified as a Beth Din to appraise the estate of one deceased, for the support of his widow and daughters, and if one says that in his opinion the estate is worth twenty-five selas (a moanah of

100 zuz), and the two others say two hundred or *vice versa*, the opinion of the individual is of no effect; but if one appraises the estate at one hundred zuz, which are twenty-five selas, the second for twenty, and the third for thirty, the value is fixed at one hundred zuz. R. Eliezer b. R. Zadok, however, says that it should be taken for ninety zuz, and anonymous teachers say that a third of the difference between the second and third valuations must be added to the second, which will give 93⅓ zuz. The reason of him who says the estate is worth one hundred zuz is that the opinion of the arbitrator is to be taken into consideration, and the reason for R. Eliezer's opinion that the estate is worth ninety zuz is that he who appraised it at eighty underestimated by ten zuz, while he who appraised it at 100 overestimated by ten zuz, and as there is a majority who appraised it at not more than 100 zuz, the third, who appraised it at twenty zuz over a moah, is not to be taken into consideration at all. Why not say that the one who said 100 zuz has underestimated by ten and he who says thirty has overestimated by ten, and the estate should therefore be valued at 100? Because the majority declare it not worth more than 100 zuz, or one moah. The anonymous teachers maintain that the estate is worth 93⅓ zuz, because the one who estimated its value at twenty selas (eighty zuz) underestimated by 13⅓, and the one who said 100 zuz overestimated by 13⅓, although he had intended to say 103⅓ zuz, but thought he would not like to make his difference too large. And why not say that the one who said thirty selas (120 zuz) has overestimated by thirteen, and the estimate should be fixed at 113 zuz? The opinion of the majority that the estate is not worth over a moah is to be taken into consideration. Said R. Huna: The Halakha prevails with the anonymous teachers. Said R. Ashi: The reason of the anonymous teachers is not acceptable; should we decide according to them? There is a Boraitha that the judges of the exile are in accordance with the anonymous teachers, and R. Huna said again that so the Halakha prevails, but R. Ashi objected again for the same reason stated above.

MISHNA *V.*: If one says "I sell you the half of the field" (the half of the value is meant), the better one against the inferior is to be appraised, and the seller has a right to give the buyer the latter. The same is the case when he said "I sell you

the southern half of this field," and the buyer takes the half determined on by the seller. The seller, however, has to give space for a partition, and for a large and a small ditch. What is the breadth of a large ditch? Six spans. And of a small one? Three.

GEMARA: Said R. Hyya b. R. Abba in the name of R. Johanan: The buyer has to take the inferior. And he (when he heard this statement from R. Johanan) said to him: Does not the Mishna say "the better one against the inferior is to be appraised"? And should not this be explained to mean that each of them should take half of both good and inferior? And he answered: It seems to me that you have eaten too many dates in Babylon (so that you have no time to descend into the depths of the Mishna). Does not the Mishna contain the same expression, in the latter part,* concerning the sale of the south side of his field? And why the repetition? It should read "he should take a half at the south side," and we would understand it to mean half of the size. We must then say that it is repeated to teach that also in that case the half of the value is meant, as the same was in the first part.

"*The partition*," etc. There is a Boraitha: "The large ditch must be outside and the small one inside of the field, but both beyond the partition, so that beasts may not jump over the partition in the field." Why then the small ditch? Does not the large one suffice for this purpose? Because it is six spans wide, the beasts could enter in it and jump over. But does not the small ditch suffice? Because it is small, the beasts could stand on the edge of it and jump over. And how much shall the space be between the large and the small ditch? One span.

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* The Mishna repeats the same language concerning the southern part which we, according to the sense, have translated "the same is the case."

CHAPTER VIII.

RULES AND REGULATIONS CONCERNING BEQUESTS TO AND INHERITANCE BY NEAR AND DISTANT RELATIVES, MALE AND FEMALE SLAVES AND THEIR DESCENDANTS, FIRST-BORN AND HUSBANDS. ONE MAY OR MAY NOT WISH TO BEQUEATH HIS ESTATE TO STRANGERS WHEN HE HAS CHILDREN. WHICH WILLS MUST BE CONSIDERED AND WHICH WILLS MUST NOT. THE DIVIDING OF AN INHERITANCE BETWEEN GROWN-UP AND MINOR CHILDREN, MALE AND FEMALE.

MISHNA *I.*: (Concerning inheritance, there is a difference between relatives.) There are those that bequeath at their death, and also inherit at the death of their relatives. There are those who inherit but do not bequeath, and also those who neither bequeath nor inherit. The father, his children, and also the brothers of the father may both bequeath and inherit to and from each other. The son from his mother, and the husband from his wife, and also the children of sisters inherit, but the former do not bequeath to the latter. The woman to her children, her husband, and her brothers bequeaths, but does not inherit from them. The brothers of the mother, however, neither bequeath to nor inherit from her.

GEMARA: Why does the Mishna mention the father his sons first? It does so, first, because the reverse order would imply a curse, and usually the beginning must not be with a curse (for when the son dies before his father it is certainly a curse), and, secondly, the Scripture [Numbers, xxvii. 8] reads, "If a man die and have no son," etc.; hence the death of the father is mentioned first. The Tana of the Mishna does thus because the law that a father shall inherit from his son is not written in the Scripture but is deduced (as will be explained farther on) and he desires to mention it first. Whence do they deduce it? From the following Boraitha: "(It is written) 'his kinsman means the father, from which it is deduced that if one dies and leaves brothers and a father, the father is the heir and not the brothers'; but lest one say that the father of the

deceased is preferred to his son, it is written 'that is next to him,' which means, whoever is nearest, and the son to his father is considered nearer than a father to his son. And what is the reason that you exclude the brother and include the son? Because the Scripture has substituted the son for the father in the case of a man servant [Ex. xxi. 9] and also in that concerning the possession of a field [Levit. xxv. 13], of which it is said elsewhere that only when the son has redeemed the field sanctified by his father, it may be returned in the jubilee year, but not if the father's brother or any other relative has done so. But why not say that the brother shall have the preference, as he inherits from his brother in case the latter dies childless [Deut. xxv. 5]? This cannot hold good, as the brother thus inherits only if there is no son; but if there is a son the brother does not inherit." Is it only for this reason, and if it were otherwise would the brother be the heir? May the son be substituted for his father in the two cases above stated, and the brother in the one case only? Nay, the same reason is given in the case of the above-mentioned possession of a field, wherein the son is preferred to the brother, also because the brother inherits only when there is no son. But why not say a kinsman means the father, from which we infer that he is preferred to his daughter? Lest one say that he is preferred to his son also, therefore it is written, "who is next to him," and a son is nearer to his father than the father to his son. As said above, this could be opposed thus: Let us see! If one dies and leaves a daughter, it is the same concerning Yeboom as if he should leave a son. Hence we see that a son and daughter are here equal before the law, and the same equality would obtain concerning inheritance. But why not infer from this that the father has the preference over *his* brother? And lest one say that he should have the preference over the brothers of the deceased also, it is written "the next," and brothers are considered nearer than the father to his son. It is not necessary that the father's brother be considered as excluded in the Scripture, as that would be contrary to common sense. What is the basis for the inheritance of the uncle of the deceased from his nephew, if not that his brother is the father of the deceased; and when the father is still alive, why should the brother be the heir?

But let us see. The passage in the Scripture does not corre-

spond with all that is taught above [Num. xxvii. 8], "If a man die and have no son, then shall ye cause the inheritance to pass unto his daughter, and if he have no daughter . . . unto his brothers . . . and if no brothers, unto his father's brothers, and if . . . no brothers, . . . to the kinsman." (Hence when the kinsman is mentioned at the end, how can you say that it means the father, who is the first in case the deceased left no son?) The passages are not written in order, as the kinsman, meaning the father, should be mentioned first, but the Scripture relies upon the words "who is next to him," and it is for the court to decide who is nearest to him. The following Tana, however, deduces it from the same passage in another manner, as we have learned in the following Boraitha: R. Ishmael said: "It is written, 'If a man die and have no son, then ye shall cause his inheritance to pass,' etc. Infer from this that you transfer the inheritance from the father only when the deceased left a daughter, but not when he left brothers." But why not say that the daughter transfers the inheritance from his brothers but not from his father? Because if it were so, the passage would read "and ye shall *give* the inheritance," and not "ye shall *cause to pass*," which means that if there is a daughter, her father may pass the inheritance to her, even when his own father is still alive. Now, what does kinsman mean in the opinion of R. Ishmael, who has deduced this from the words "ye shall cause to pass"? That which the following Boraitha states: "His kinsman means his wife. Deduce from this that the husband inherits from his wife." But to him who infers this from the word kinsman, what do the words "ye shall cause to pass" mean? That which we have learned in the following Boraitha: Rabbi said: In all the passages it is written "shall ye give," and only concerning the daughter "ye shall pass," to show that there is no one who shall pass an inheritance to another tribe except a daughter; so if she marries one of another tribe, her son or her husband may inherit from her.

But, after all, where is it you are assured that kinsman means the father? In Levit. xix. 12, "Thy father's kinswoman." Then why not say it means the mother, as the next verse reads "thy mother's kinswoman"? Said Rabha: It is written [xxvi. 11] "next to him of his family," and the family is named

only from the father's side as [ibid., 2] "after their families, by the descent from their fathers." But is not the name of the mother's side also employed? Is it not written [Judges, xvii. 7], "And there was a young man out of Bethlehem-Judah of the family of Judah, but he was a Levite, and sojourned there"? Now does not this passage contradict itself? It is written "of the family of Judah," from which it is to be inferred that they came from the tribe of Judah, and then it says he is a Levite, which means that he was of the tribe of Levi. We must conclude that his father was from Levi and his mother from Judah, and nevertheless this is called a family name. Said Rabha b. R. Hanan: The verse reads "and he is Levi," which does not mean that he was a Levite, but that his name was Levi. If so, how is to be understood (ibid., 17), "I have obtained a Levite for a priest"? There it is also written Levi, and means a man by the name of Levi. But how can you say that his name was Levi? Was not his name Jonathan, as it is written (ibid., xviii. 30), "And Jonathan the son of Gershom . . . were priests," etc.? And he answered: Even according to your theory, was he then the son of Menashe? He was the son of Moses, as it is written [I Chron. xxiii. 15]: "The sons of Moses were Gershom and Eliezer." It is written Menashe, because he acted like Menashe, who was an idolator; and therefore the phrase "of Judah" is employed because Menashe came from Judah. R. Johanan in the name of R. Simeon b. Jo'hai said: From this is to be inferred that we confer a corrupt name on a corrupt man. R. Jose b. Hanina, however, said that this may be inferred from the following [I Kings, i. 6]: "And his mother had after Abshalom." But was not Adoniyah the son of Chaggith, and Abshalom the son of Maacha? We must say that because he acted like Abshalom, who also rebelled against the kingdom, the verse conjoined him with Abshalom.

R. Elazar said: We see that when Moses married the daughter of Jethro, Jonathan was the outcome, and when Aaron married the daughter of Aminadab the outcome was Pinchos.

But was not Pinchos also a descendant of Jethro, as it is written [Ex. vi. 25], "Elazar took of the daughters of Putiel for wife and she bore unto him Phinchas," and it is said elsewhere that Jethro and Putiel are identical? Nay, this Putiel is Joseph, as it is also said elsewhere that Joseph and Putiel are

identical.* But is it not said elsewhere that the tribes chided Phinchas, saying: "See the descendant of Puti, whose grandfather had fattened calves for idols; shall he dare to kill a prince of the tribe of Israel?" Both names are applicable; for if his mother's father was a descendant of Joseph, his mother's mother was a descendant of Jethro or *vice versa*, and the word Putiel instead of Puti may mean both.

Rabha said: If one is about to marry, it is advisable for him to investigate the character of the bride's brothers; as it is written (ibid., 23), the "sister of Nachshon." To what purpose is it written the "sister of Nachshon"? Is it not evident that she was the sister of Aminadab? Hence this is an intimation to one about to marry to investigate the brothers of his prospective bride. There is also a Boraitha to the effect that the majority of children resemble the brothers of their mother. It is written [Judges, xviii. 3], "Who brought thee hither?" (*halom*) which means "Are you not a descendant of Moses?" of whom it is written [Ex. iii. 5] "hither" (*halom*), and "thou shalt be a priest to the idol"? And he answered: "I have a tradition from the house of my grandfather that it is better for one to hire himself to *Abhada Zarah* (idolatry) than to rely upon people that shall support him." [(Says the Gemara:) He has misunderstood it. *Abhada Zarah* means "idolatry." Literally, however, it is "a strange service" and it is as Rabh said to Kahana: (If you are in need), fleece a carcass in the middle of the market and do not say you are a great man, and it is not fit for you.]

David saw that he was fond of money and appointed him treasurer for the government, as it is written [I Chron. xxvi. 24], "Shebuël the son of Gershom, the son of Moses, superintendent of the treasuries." Was then his name Shebuël? Was it not Jonathan? Said R. Johanan: Shebuël is composed of two words, *Shebu*, which means "repented," and *El* means "God"; and "Shebuël" means that he repented to God with all his heart.

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* The Gemara infers it from terms in Hebrew or Chaldaic which it is impossible to translate into English; namely, Putiel, which is a name, *Pitem* meaning in Aramaic "fat," and *Pitpet*, which means in Aramaic "subduing." Hence by Putiel can be meant Jethro, who fattened calves for idols, and also Joseph, who subdued the evil spirits.

"*His children . . . inherit.*" Whence is this deduced? It is written [Numbers, xxvii. 8], "If a man die, and have no son," etc. We see the case is one wherein he has no son, but if he has one, that one has the preference. Said R. Papa to Abayi: But perhaps it means that if there is a son only, he shall inherit, and if there is a daughter only, she shall inherit; but if there were a son and a daughter neither of them should inherit. Said he: Who then shall inherit—the mayor of the city? I mean to say that neither of them shall inherit all, but each take an equal share. Said Abayi to him: Was it then necessary for the Scripture to state that if there were only one son he may inherit all the estates of his father? Answered he (R. Papa): I mean to say that the verse perhaps came to teach that a daughter may also be an inheritor. And he (Abayi) answered: This is already written [ibid., xxxvi. 8], "And every daughter that inheriteth," etc. R. A'ha b. Jacob said: This is to be deduced from the following [ibid., xxvii. 4], "Why should the name of our father be done away from the midst of his family because he hath no son?" But if he should have a son, the son would have the preference; but perhaps this was only the saying of the daughters of Zelophchod (*i.e.*, they thought that such was the law, as it was customary at that time). But after the Torah was given the law was changed, that a son and daughter should inherit together; therefore Abayi's explanation is better.

Rabhina said: This is to be deduced from the words "next to him," and a son is nearer than a daughter; and why? As it is said above, he may be substituted for his father in the cases concerning a maid-servant and a field, etc. But could then a daughter be substituted for her father in the case of a maid-servant? Hence the best interpretation is Abayi's; and if you wish, it may be deduced from Levit. xxv. 46, "For your sons after you," etc., which means to your sons * and not to your daughters. But according to this the verse [Deut. xi. 21], "The days of your children," which is also written with "*Bniechein*," should also be explained the sons and not the daughters? With a blessing it is different.

"*The brothers of the father.*" Whence is this deduced? Said Rabba: By analogy of expression "brothers" here [Num-

* It is written *bniechein;* literally, "sons." Leeser translates "children," according to the sense.

bers, xxvii. 9] and in Genesis, xlii. 32. "We are twelve brothers, the sons of our father"; as there they were brothers of the father, so are they here also on the father's side. But was it not said above that from the father's side the family is named, but not from the mother's? (See above, p. 244.) Yea, this is deduced from verse 11, as above, and Rabba's statement was taught concerning Yeboom (the marriage of a brother to the widow of his childless brother).

"*The son from his mother.*" Whence is this all deduced? From that which the rabbis taught. It is written [Num. xxxvi. 8], "Any daughter who inherits the estate of the tribes."* How can a daughter inherit from two tribes? It must be concluded that her father was from one tribe and her mother from another, and both died leaving estates, and she has inherited both. This is concerning a daughter, but whence have we knowledge concerning a son? From the *a fortiori* argument that as a daughter who has no share in the inheritance of her father when there is a son is nevertheless an heir to the estate of her mother, a son who inherits from his father so much the more inherits from his mother. And from this it is to be deduced that, as there the son has the preference over the daughter as an heir of the father, so is it also with the inheritance from the mother. Both R. Jose b. Jehudah and R. Elazar b. Jose, however, say in the name of Zecharia the son of the butcher that a son and a daughter are equally heirs of their mother. Why so? Because there is a rule: It is sufficient that the result derived from the inference be equivalent to the law from which it is drawn (and as the law that a son may inherit from his mother is drawn *a fortiori* from the case of the daughter, it is sufficient to say that he inherits also, but not that he shall have the preference). But does the first Tana ignore the theory of "it is sufficient"? Is this not biblical, as we have learned (First Gate, p. 51, in the beginning of the Gemara)? In all other cases he uses the theory; here, however, it is different, because of the reading "from the tribes." We see then that the tribe of the mother is equal to the tribe of the father, and as concerning the father's the son has the preference, so also is it concerning the mother's.

Nithai was about to act in accordance with Zecharia, and

* Leeser's translation does not correspond.

Samuel said to him: Ignore Zecharia, as the Halakha does not prevail with him. R. Tabla had acted in accordance with R. Zecharia, and R. Na'hman asked him what he had done. And the answer was that he had done so because R. Hinna b. Shlamiah said in the name of Rabh that the Halakha prevails with R. Zecharia the son of the butcher, and R. Na'hman told him, "Go and retract from your statement, and undo what you have done, and if you will not listen, I will put out R. Hinna from your ears" (I will place you under the ban). R. Huna b. Hyya was also about to act in accordance with R. Zecharia, and R. Na'hman said, "What are you doing?" And he answered: "I do so because R. Huna said in the name of Rabh that the Halakha prevails with R. Zecharia. Said R. Na'hman: "I will send immediately a message to R. Huna asking him if he said so." And Huna b. Hyya became ashamed. Said R. Na'hman to him: "If R. Huna were dead, you would rebel against me and act accordingly." But in accordance with whose was R. Na'hman's opinion? With both Rabh's and Samuel's decision that the Halakha does not prevail with R. Zecharia.

R. Janai leaned upon the shoulders of R. Simlai his servant, when he walked on the street, and it happened that R. Jehudah the second was coming in an opposite direction, and R. Simlai said to him: "The man who is coming in an opposite direction is a respectable one, and he is also nicely dressed." When they came together, R. Janai fumbled about R. Jehudah's dress * and said: "Is this what you call nicely dressed? It seems to me like a sack." Jehudah the second questioned him: "Whence is it deduced that a son has the preference over a daughter in the estate of their mother?" And he answered: "Because it is written 'tribes,' and the verse compares the tribe of the mother with the tribe of the father. As in the former case the son has the preference, so is it in the latter." Said Jehudah: "If so, why not say that as in the father's case the first-born takes a double share, so should it be in the mother's?" Said R. Janai to his servant: "Take me away from him, this man does not want to learn." And what was the reason? Said Abayi: It is written [Deut. xxi. 17], "of all that is found in his possession," not in her possession. But why not say that

* R. Janai was very infirm and could not see well.

this is so when a single man has married a widow who has children from the first husband, but if a single man has married a virgin, the first-born shall take a double share? Said R. Na'hman b. Itz'hak: The same verse cited reads, "for he is the beginning of *his* strength," *his* but not *her*. Is this verse not necessary to include a first-born who came after a miscarriage, that he is entitled to a double share, although he is not considered as such to be redeemed? Because it should be read, "he is the first of strength," and from the addition *his* both inferences are drawn. But still it may be said in case a widower married a virgin, but if a bachelor married a virgin then the first-born is entitled to a double share also from his mother. Therefore said Rabha: The verse ends "to him belongeth the right of first birth"; which means to him a *male*, but not to a *female*.

"*And the husband from his wife.*" Whence is this deduced? From that which the rabbis taught. It is written [Numbers, xxvii.], "his kinsman," and his wife is meant. Infer from this that the husband inherits from his wife; but lest one say that she inherits from him also, it is written [ibid.] "and he shall inherit from her." "*Outhoh*" means he inherits from her, but not she from him. But the verses are not written in that order, you say? Said Abayi: Read thus: "Then shall ye give his inheritance to his next kinsman and *he* shall inherit from her." Said Rabha to him: It seems to me that you have a keen knife to cut the verses. Therefore, said he, the verse means he shall give the inheritance from *his* kinsman to him; as he holds that the sages have a right to subtract, to add, and to interpret. (*I.e.*, it is written *nachlossou*, literally "his inheritance," with a Vav at the end; *lishourou*, literally "to his kinsman," with a Lahmed at the beginning. Subtract the Lahmed from *lishourou* and the Vav from *nachlossou*. Put these two letters together and they will read *lou*, literally "to him," and then the verse will read thus: "Ye shall give the inheritance of his kinsman to him.) The following Tana, however, infers this from the same verse in another way, as we have learned in the following Boraitha: It is written, "And he shall inherit from her." Infer from this that the husband inherits from his wife. So said R. Aqiba. R. Ishmael, however, said: It is not necessary to cut the verses (he does not hold the theory of subtracting, adding,

etc.), as there are other verses [ibid., xxxvi. 8], "every daughter that inheriteth," which refers to the transferring of an estate from one tribe to another through the husband, who is of one tribe and has married a woman of another tribe. It is written [ibid. 7], "And the inheritance of the children of Israel shall not pass from tribe to tribe," and it is also written next, "and no inheritance shall pass from one tribe to another," and then it is written [Joshua, xxiv. 33], "And Elazar the son of Aaron died and they buried him in the hill of Pinchas his son." Where then had Pinchas a hill which Elazar did not possess? We must then conclude that Pinchas married a woman who owned a hill, she died and he inherited it. And it is also written [I Chronicles, ii. 22], "And Segub begat Jair, who had three and twenty cities in the land of Gilad." And wherefrom did Jair obtain that which his father, Segub, did not possess, if not by inheritance from his wife. But to what purpose did R. Ishmael cite all the above verses? Lest one might say that the first cited verse does not speak of transferring an estate through the husband, but through her son, and the husband does not inherit. Therefore is the other verse cited, "And the inheritance of the children of Israel shall not pass," etc. But lest one say that this verse is written to make the one who transgresses answerable under a positive and a negative commandment, but still through the son and not the husband, therefore is the third verse cited. But lest one say that this verse is also written for the purpose of making the transgressor answerable under two negative and one positive commandments, therefore is the fourth verse cited; and lest one say that Elazar's wife owned a hill and Pinchas inherited it from her, therefore is the fifth verse cited. And lest one say that the same was the case with Segub and Jair, then why two verses which contain the same case?

Said R. Papa to Abayi: But what does this support? It may be said that the husband does not inherit, and all the above cited verses state that it was through the son, and did both Jair and Pinchas buy the estate in question? And Abayi answered: You cannot say that Pinchas bought the estate, as if this had been so the property would have been returned to the seller in the jubilee year, and then the upright Elazar would have been buried in ground not his own. But perhaps the hill

in question was transferred to Pinchas from estates set apart for the priests [Numb. xviii. 14]. Said Abayi to him: If we were to agree with your theory, the estate would be still transferred from one tribe to another. Is it not explained above that verse 8 refers to a woman who has inherited from both father and mother, who were of two different tribes? Why, then, if she should marry one belonging to the tribe of her father, would the estate of her mother be transferred to another tribe? And R. Papa said: This is no objection, as the case may be different, and perhaps the estate of her mother was already transferred. Rejoined Abayi: Such a supposition cannot be taken into consideration; as one would not say that because a part had already been transferred, the other part should now be transferred. Furthermore, the transfer was according to the law, as when a woman has married one of another tribe, her brother being still alive, she then possessed no heritage, but received it after she was already married. Afterward her daughter, who has inherited her mother's estate, if she should marry even one belonging to her father's tribe, her son would inherit from her the estate which had belonged to another tribe.

Said R. Jiiman to R. Ashi: Even in accordance with Abayi, who holds that the husband does inherit, it is correct. If the verse is to be explained that the daughter has already inherited from her mother, who was of another tribe, the Scripture commands that she shall marry one of another tribe, to the end that the estate of one tribe shall not be transferred to another one, no matter whether through son or husband; but if the estate of her mother was not as yet transferred, why should she marry one of her father's tribe? The estate of her mother, which belongs to her, if her husband inherits from her, would be transferred to him; hence the estate of one tribe would be transferred to another. The answer was that she might marry a man whose father was of the tribe of her father, and his mother of the tribe of her mother, and in such a case the estate of her father remains within the tribe of her father, and the estate of her mother remains also with the man whose mother is of the same tribe. But if so, should not the verse read "to one who is of the family of her father's and mother's tribe"? If the verse should so read, one might say that even if her husband's father were of her mother's tribe, and his mother was of

her father's tribe, this would not be in accordance with the law, as the estate of her father would be transferred to her husband, who is of another tribe. There is a Boraitha that through the son the estate is transferred, namely: "The seventh verse reads 'the inheritance of the children of Israel shall not pass,' etc., which refers to the son. But perhaps it refers to the husband? This could not be, as verse 9 reads 'as no inheritance shall pass from one tribe to another,' which refers to the husband; hence verse 7 refers to the son." There is another Boraitha: "Verse 9 refers to the husband, but perhaps it refers to the son? This cannot be, as verse 7 has already referred to the son." We see, then, that both Boraithas hold that verse 9 refers to the husband. Where is this taken from? Simon in the name of Rabba b. R. Shila said: From the expression "*ish*" in verse 8, which means husband. But is not the same expression in verses 7 and 9? Said R. N'ahman b. Itz'hak: From the expression "*Idbako*" (adhere). But also this expression is in 7 and 9? Therefore said Rabha: From the end of verse 9, which reads "the tribes of Israel shall adhere"; and R. Ashi maintains, from the expression "from one tribe to another tribe," a son cannot be called of another tribe.

R. Abuhu in the name of R. Johanan, who spoke in the name of R. Janai, who heard it from Rabbi, quoting R. Joshua b. Kar'ha, said: Whence is it deduced that the husband does not inherit the estate to which his wife during her life is only heir apparent (*e.g.*, his wife is an only daughter and she dies before her father, leaving a child, and thereafter her father dies, and her child but not her husband inherits)? From [I Chronicles, ii. 22]: "Segub begat Jair, who had three and twenty cities." Whence did Jair obtain these, which his father did not possess. Infer from this that Segub had married a wife who had twenty-three cities, and she died while her nearest heirs yet lived. Thereafter her nearest heirs also died, and Jair, her son, not Segub, her husband, was her heir. And the same is the case with Elazar, who married a woman who possessed a hill, and she died while her nearest heirs were still alive, and thereafter the nearest heirs also died and Pinchas inherits from her. How are we assured that Elazar's wife brought him the hill; perhaps Pinchas' wife possessed it? By the words "his son," in Joshua, xxiv. 33 (which are superfluous, as every one

knows that Pinchas was his son), meaning his son who was the proper heir."

"*And also the children of sisters.*" There is a Boraitha, "Sons but not daughters of sisters." How is this to be understood? Said R. Shesheth: It means that if there were sons and daughters, the sons would have the preference. As R. Samuel b. R. Itz'hak taught in the presence of R. Huna: It is written [Numb. xxvii. 11] "and he shall inherit it," which means that the second inheritance shall be equal to the first; as in the first the son has the preference, so it shall be with the second. Rabba b. Hanina taught in the presence of R. Na'hman: It is written [Deut. xxi. 16], "Then shall it be (in the day *) when he divideth an inheritance," which means in the daytime he may divide an inheritance but not in the night-time. Said Abayi to him: "Do you mean to say that only from him who dies in the daytime his children may inherit, but otherwise they cannot? Perhaps you mean to say that judges must not discuss a case of a will, at night, as we have learned in the following Boraitha: It is written [Numb. xxvii. 11] "a statute of justice," which means that the whole section which treats of inheritance is a statute of justice (which must be discussed in the daytime *only* and by no less than three judges). It is as R. Jehudah said elsewhere: If three persons visited a sick man and he made verbally his last will before them, they might, if they wished, write it down, and, further, they might execute it. If, however, there were only two, they might write down his will (as witnesses), but could not execute it. And to this R. Hisda added that so it is as to the daytime only, but if it were at night, even if there are three, they may write down the will, but not execute it; because they are considered witnesses only, and a witness cannot qualify as an executor. And Rabba answered him: Yea, this is what I meant to say.

It is taught: In the case of a gift with the ceremony of a sudarium by any person, whether healthy or sick, what time may be given him to retract? Rabba said: As long as they are sitting at that place where the ceremony was performed. And R. Joseph said: As long as they are discussing this matter. Said R. Joseph also: It seems to me that I am right in my decision, as R. Jehudah said that three who are visiting a sick person

* The Scripture reads *byoum*, "at the day," which Leeser has not translated.

may, if they like, write down his will and execute it; now, if you say he may retract as long as they are sitting there, though they do not discuss the matter, how can they execute the will but in the doubt that while they are doing so he may retract? Said R. Ashi: I have maintained before R. Kahana, even in accordance with R. Joseph's theory, that it is to be feared that even while they are discussing this matter he will retract; how then can they execute the will? Say, then, that they have ceased to discuss this matter and are discussing another one. The same can be said here, that they arose after hearing his will, and again took their seats. The Halakha, however, prevails in accordance with R. Joseph concerning the field mentioned above (p. 38), concerning this case, and concerning the case of "a half" (when the sick man says, "I bequeath my estate to you and your son," upon which, according to R. Joseph, the estate may be divided equally), which matter will be explained in Chapter IX.

"*The woman to her children.*" To what purpose is this repeated? Does not the first part read "the son from his mother," etc.? It comes to teach us that the case of "the woman to her children" is equivalent to that of the woman to her husband. As the husband does not inherit in the place of his wife that which she would have inherited had she lived (as illustrated in the case of the woman who predeceases her father), so also the son inherits his mother's share, but his brothers (of the one father) do not inherit from him if he dies.* R. Johanan in the name of R. Jehudah b. R. Simeon said: Biblically a father inherits from his son, and a mother also inherits from her son, as it is written "tribes," from which is deduced the tribe of the mother as well as the tribe of the father; as concerning the tribe of the father, the father inherits from his son, the same is the case with the mother. R. Johanan, however, opposed R. Jehudah, from our Mishna, which states that a woman to her son, her husband, and the brothers of the mother may bequeath but not inherit. R. Jehudah answered: I am not aware who taught our Mishna; but let him say that our Mishna is in accordance with R. Zechariah, who does not care to explain the

* This is the explanation of Gershom. Rashbam, however, interprets it to mean that if the son dies while his mother is still alive, the legal heirs are not his brothers, but the relations of her father.

word "tribes" as a comparison. Our Mishna cannot be explained in accordance with R. Zechariah, as it states "and the children of sisters," and a Boraitha adds that the sons but not the daughters are meant, which was explained by R. Shesheth as meaning that the sons have the preference, and according to R. Zechariah, sons and daughters are equal heirs of their mother. But how is to be explained the teaching of the Tana of our Mishna? If he holds that the word "tribes" is to be taken as a comparison of one tribe to another, why should not a woman inherit from her son; and if he does not, whence does he derive his theory that a son has the preference in the estate of his mother? The comparison holds good, but this case is different; because it is written "every daughter that inheriteth," which means she may inherit but does not bequeath.

MISHNA *II.*: The order of inheritance is thus: If a man dies, leaving no son, the inheritance shall pass to his daughter (reads the passage), by which we see that the son has preference before the daughter, and the same is the case with all the descendants of the son, who also have preference before the daughter. The daughter has preference over the brothers of her father, and the same is the case with her descendants. The brothers of the deceased have preference over the father's brothers, and the same is the case with their descendants. This is the rule: After every one who has the preference concerning an inheritance, his descendants have, in order, a like preference. The father has the preference before all his descendants.

GEMARA: The rabbis taught: It is written "a son"—from which we know the son himself only, but whence do we deduce the son's son or his daughter, or even the grandson of his daughter? It is written *ien lou ;* and we read the word *ien* as if it were written *ayin*, which means investigate, for perhaps his son left a son or a daughter, etc. It is also written "a daughter," by which we know indeed the daughter, but whence do we deduce her daughter, son, and daughter of her son? It is written *ien*, "*ayin*," as said above. And the same is the case with investigation in the opposite direction (*i.e.*, perhaps the father's father is yet alive), so that an investigation concerning inheritance may stretch back to Reuben, the son of Jacob. Why only back to Reuben, and not as far as Jacob? Said Abayi: We have a tradition that the whole tribe cannot be ex-

tinguished.* R. Huna in the name of Rabh said: If one decides that a daughter shall inherit, when there is a daughter of a son, even if he were a prince in Israel, he must not be listened to, as so acts the Sadducean, which we have learned in the following Boraitha: On the 24th day of the month Tebheth we returned to our old law, namely: the Sadducean used to say that a daughter should inherit an equal share with the daughter of the son, and Rabban Johanan b. Zakai said to them: "Ye fools, wherefrom have ye taken this?" And none was there to answer him, except an old man who talked (childishly) against him thus: Is this not an *a fortiori* conclusion? The daughter of his son who comes upon the strength of her deceased father, the son of the bequeather inherits. So much the more the daughter who comes upon the strength of the bequeather himself should take a share in the inheritance. R. Johanan then read before him [Gen. xxxvi. 20], "These are the sons of Seir the Chorite, who inhabited the land, Lotan and Shobal and Zibon and Anah," and there is also written [ibid. 24]. "And these are the children of Zibon, both Ajah and Anah." How is it to be understood? Infer from this that Zibon had lain with his sister Ajah, and she bore Anah. [But perhaps there were two Anahs?] Said Rabba: I shall say a thing which would be fit for King Sabur to say [Samuel is meant, although, according to others, R. Papa said so when he meant Rabba]. It is written in the same verse cited "that Anah," which means one that is the same as the Anah of verse 20. Said the Sadducean to R. Johanan: Rabbi, with such an explanation do you think to override me? R. Johanan answered: And why not? Should not our Torah with its regulations ignore your gossip? Your *a fortiori* conclusion could be easily overthrown by the following theory: How can you compare one's daughter to the daughter of his son, when the latter has a right of inheritance even when the brothers of her father are still alive, while the former has no such right (for a daughter does not inherit when she has brothers)? And with this he conquered the Sadducean, and this day was established for a festival.

It is written [Judges, xxi. 17]: "And they said their inheritance must be secured for Benjamin, that not a tribe may

* *I.e.*, it cannot happen that all the descendants of one of the twelve tribes of the sons of Jacob should die. The basis of this is Malachi, iii. 6.

be blotted out from Israel." Said R. Itz'hak of the school of R. Ami: Infer from this that at that time a stipulation was made that as long as the tribe of Benjamin should continue, the daughter of a son should not inherit her share with existing brothers, in order that, through her marriage to a man of another tribe, she might not divert the estate from the tribe of her father. R. Johanan in the name of R. Simeon b. Johai said: He who leaves no son to succeed him is unloved of heaven, as it is written [Psalms, lv. 20]: "Those who leave * no changes fear no God." R. Johanan and R. Joshuah b. Levi differ. According to one a son is meant, and according to the other a disciple. From the fact that R. Joshuah b. Levi did not go to a funeral unless the deceased was childless, because it is written [Jeremiah, xxii. 10], "Weep sorely for him that goeth away," which R. Jehudah in the name of Rabh interpreted as meaning "he who passeth away without a son," it must be concluded that R. Joshuah b. Levi was the one who said "a disciple." R. Pinchas b. Hama lectured: It is written [I Kings, xi. 21]: "And when Hadad heard in Egypt that David slept with his father and that Joab the captain of the army was dead." Why concerning David is it written "slept," and concerning Joab "dead"? Because David left a son, and Joab did not. But is it not written [Ezra, viii. 9]: "From the children of Joab, Obhadia b. Jechiel"? Therefore, as "slept" is the word employed for David, we must conclude that he left a son like himself, which was not the case with Joab. Wherefore in his case the term "dead" is used. And he also said: Poverty in the house of one is harder than fifty plagues, as it is written [Job, xix. 21]: "Spare me, spare me, O ye my friends! for the hand of God hath touched me." And he was answered [ibid. xxxvi. 21]: "Thou hast chosen this instead of poverty." † The same said again: If one has a sick person in his house, he shall go to a wise man and request him to pray for the sick one, as it is written [Prov. xvi. 14]: "The fury of a king is like the messengers of death; but a wise man will appease it."

"*This is the rule.*" Rami b. Hama questioned: If the deceased left a grandfather and a brother, as did Abraham and Jacob to the estate of Esau, who had the preference? Said

* Leeser translates "dread," which does not correspond.

† Leeser does not correspond at all.

Rabha: Come and hear the decision of our Mishna, which states that the father has the preference before all his descendants. Rami, however, maintains that the father has the preference over his descendants, but not over the descendants of his son. (Says the Gemara:) It seems that Rami is right. As the Mishna states, this is the rule: He who has preference concerning inheritance, his descendants have the same. Now, if when Esau died Isaac and Abraham were both alive, Isaac would have had the preference to the estate; the same would have been the case if Isaac had been dead. Then Jacob would have had the preference over Abraham, because he was a descendant of Isaac. Infer from this that so it is.

MISHNA *III.*: The daughters of Z'lophchod have inherited three shares from the inheritance of their father, his share as one of the ascendants from Egypt, his share in the division of Chipher his father (who was also among the ascendants from Egypt), and because he was a first-born he inherited a double share.

GEMARA: Our Mishna is in accordance with him who said that the land was divided among the ascendants from Egypt, and not to their children (*i.e.*, the person who entered the land of Israel, if he was among the ascendants of Egypt, took his share, and divided it among his children; and if an ascendant had died and his children entered the land, the share of their deceased father was given to them and they divided it among themselves), as we have learned in the following Boraitha: R. Iashiah said: The land was divided to the ascendants of Egypt, as it is written [Numb. xxvi. 55], "According to the names of the tribes of their fathers." But how does this correspond with [ibid. 53], "unto these shall the land be divided," which means to those who entered the land? Those are meant who are of sufficient age (twenty years), excluding the minors. R. Jonathan, however, said that to those who *entered* the land it was apportioned, not to their fathers, as it is written in the verse just cited. But how would this correspond with verse 55? This inheritance is different from all other inheritances, as in all others the living inherit from the dead, and here the dead inherit from the living; and to illustrate this, said Rabbi, I shall give you a parable. It is similar to the case of two priests in one city, one of whom has one son, while the other has two;

and when they go to the barn to take the Taruma, he who has only one son takes one share (*e.g.*, a saah), and he who has two takes two shares, and they turn them over to their fathers, who divide the shares equally among themselves, according to the number of souls. Such, also, was the apportionment of the land of Israel. Each received land according to the number of his souls, and after that they divided it among themselves according to the number of the heads of the family who were of the ascendants from Egypt; hence the dead ascendants inherit from the living. R. Simeon b. Elazar, however, said that the land was apportioned to both, in the manner stated in both of the above-cited verses. How so? He who was of the ascendants from Egypt took his share among them, and he who was of those who entered the land of Israel took his share among them, and he who was of both the ascendants and the entering took his shares with both of them. The shares of the spies Joshuah and Caleb took and divided equally. Those who murmured and the congregation of Kora'h had no share in the land at all, and their children took their shares, as the direct heirs of their grandfathers on both the paternal and maternal sides. But whence do you know that in Num. xxvi. the ascendants from Egypt are meant? Perhaps it means the tribes themselves who entered the land? It is written [Ex. vi. 8]: "I will give it you for an heritage." Inheritance implies from parents to children, and this was said to the ascendants from Egypt.

Said R. Papa to Abayi: It is understood by him who says that the land was divided among the ascendants from Egypt [Num. xxvi. 54], "To the large tribe shalt thou give the more inheritance, and to the small shalt thou give the less inheritance," etc.; but to him who says "to those who entered the land," what does this verse mean? This objection remains.

R. Papa said again to the same: To him who said that the land was divided to the ascendants it is to be understood why the daughters of Z'lophchod sued for their father's share; but according to him who says "to those who entered the land," for what did they sue? There was no share for them, as Z'lophchod was dead and he had no share. They sued that the share of their deceased father might be given to their grandfather Chipher, and that they might take their shares in succession. (He said again:) It is comprehended by him who says "the

ascendants," etc., why the children of Joseph cried [Joshua, xvii. 14], "Why hast thou given me but one lot and one portion of inheritance?" But to him who says "to those who entered," why did they cry—each of them took his share? They cried concerning the minor children, which were numerous. Said Abayi: From all this is to be inferred that all who entered the land of Israel had a share; and if not, they protested. And lest one say that he whose protest had effect is written, and he whose protest had no effect is not written, then the protest of the children of Joseph was of no effect and nevertheless written down. This is beside the purpose of the verse, which is aimed to convey good advice to mankind; in effect, that one shall take care not to be afflicted by a covetous eye. And this is what Joshuah said to the children of Joseph [ibid. 15], "If thou art a numerous people, then get thee up to the wood country," which means, "Go and hide thyself in the forest, that no covetous eye may afflict thee"; and they answered: We are the descendants of Joseph, whom a covetous eye cannot afflict. As it is written, etc. [see Middle Gate, p. 213].

The text says that the shares of the spies Joshua and Caleb inherited. Whence is this deduced? Said Ula: It is written [Numbers, xiv. 38]: "But Joshua the son of Nun and Caleb . . . remained alive." What is meant by "remained alive"? Shall we assume it is meant literally? To this there is another verse [ibid. xxvi. 65], "save Caleb and Joshua." We must then conclude that the first-cited verse means that they lived with their shares. Farther on they murmured, and the congregation of Kora'h had no share? But did not a Boraitha state that the shares of the spies, the murmurers, and the congregation of Kora'h, Joshua and Caleb inherited? This presents no difficulty. The Tana of our Boraitha compares the murmuring to the spies, while the other master does not, as we have learned in the following Boraitha: It is written [ibid. xxvii. 3], "Our father died in the wilderness." Z'lophchod is meant. "But he was not of the company" means "the spies"; "of those who gathered themselves" means "the murmurers in the company of Kora'h," literally. Hence one compares the murmurers to the spies, and one does not.

Said R. Papa to Abayi: And to him who does not so compare them, did then Joshua and Caleb inherit almost the whole

land of Israel (as the murmuring ones were very numerous)? And he answered: He means to say the murmurers who were among the company of Kora'h.*

"*As a first-born he inherited a double share.*" But why? At the time when Z'lophchod died the land was not as yet prepared for apportionment (as it was still in the possession of the nations), and it is said above that a first-born does not inherit a double share in that which is not yet in existence. Said R. Jehudah in the name of Samuel: The Mishna was meant to say "in their personal property."

Rabba opposes R. Jehudah's statement that the daughters of Z'lophchod took four shares, as it is written [Joshua, xvii. 5], "Ten portions of Menasseh." Therefore said Rabba: The land of Israel was considered prepared for division, since the Lord himself promised to give it as an inheritance to Israel. An objection was raised from the following: R. Hidqua said: "I had a colleague, Simeon the Shqmuni, who was one of the disciples of R. Aqiba. He used to say thus: Moses our master was aware that the daughters of Z'lophchod were heiresses; but he did not know whether they were entitled to the share of the first-born, and the passage about the inheritance would be written through Moses, even if the case of the daughters of Z'lophchod had not happened, but they were favored by heaven that this passage should be written through them. The same was the case with the wood-gatherer. Moses our master was aware that for the crime he committed there is a capital punishment, but he did not know by which of them he should be executed; and the passage would have been written through Moses, even if the case of the wood-gatherer had not happened. But as he was guilty, it was written through him; and this is what is meant by the reward of virtue, while the chastisement for sin is dealt out through a sinner. (See Sabbath, 1st ed., p. 55.) Now, if it be borne in mind that the land of Israel was prepared for division, why was Moses doubtful? He was doubtful in the following: It is written [Ex. vi. 8]: "And I will give it you for an heritage." Does this mean "an heritage from the parents"? Hence a first-born has to take a double share; or does it mean, "I give it to you—you shall bequeath it to your children" (as the decree was, that the persons ascending from

* The text continues a discussion about the same matter, explaining the supposed contradiction of the passages, which is of no importance, and is therefore omitted.

Egypt were to die in the desert), and the decision was both that the land was a heritage from the parents and yet not for themselves, but to bequeath to their children? And this is what is written [ibid. xv. 17]: "Bring them, and plant them." It was not said "*us*," and this was a prophecy, wherein they themselves did not know they were prophesying.

It is written [Num. xxviii. 2]: "And they stood before Moses and before Elazar the priest, and before the princes and all the congregation." Is it possible that when Moses did not answer them they were going to complain before the princes? Therefore this verse must be reversed. So said R. Jashia. Abba Hanan in the name of R. Elazar said: All of them were in the college when they came to make their complaint. And the point of their differing is: Whether in presence of the master the disciple must be honored or not. According to one, he may; and therefore he maintains that before they came before Moses they asked the princes, and he who said that this verse must be reversed, maintains that all were of the opinion that in presence of the master the disciple must not be honored with any question. There is a Boraitha that the Halakha prevails that he may be honored. But another Boraitha states: He may not. And it presents no difficulty. In case the master himself honors the disciple, it may be done; and in case he does not, it may not.

There is a Boraitha that the daughters of Z'lophchod were wise, understood lecturing, and were also upright. They were wise, as their protest was to the point. As R. Samuel b. R. Itz'hak said: At the time when Moses our master was sitting and lecturing about the law of Yeboom [Deut. xxv. 57], "If brothers dwell together," they said to him: If we are considered as a son, then let us inherit; and if we are not considered at all, then let our uncle marry our mother. And therefore [Num. xxvii. 5]: "And Moses brought the cause before the Lord." They understood lecturing, as they said: If he should have a son, we would not say a word. But there is a Boraitha that they said: If there should be a daughter. How is this to be understood? Said R. Jeremiah: Ignore the Boraitha. Abayi, however, said: "It is not necessary to ignore it. As they said: If there should be a daughter from a son, we would not say a word. They were upright, in that they each only married him

who was respectable and fit for them. R. Eliezer b. Jacob taught: Even the youngest of them was not less than forty years of age when she married. Is that so? Did not R. Hisda say: If a woman marries at less than twenty years of age she bears children until sixty. After twenty she bears until forty; but when she marries after forty, she does not then bear children? Because they were upright, a miracle happened to them, as to Jochebed, the mother of Moses. As it is written [Ex. ii. 1]: "And there went a man of the house of Levi, and took a daughter of Levi." Is it possible that a woman of one hundred and thirty years of age should be named daughter? As R. Hama b. Hanina said: This meant Jochebed, whose mother was pregnant while on the road to Egypt, and she was born before the walls (when they arrived in Egypt). As it is written [Num. xxvi. 59]: "Jochebed the daughter of Levi, whom (her mother) bore to Levi in Egypt." And why is she named daughter? Said R. Jehudah b. Zebidah: Infer from this that signs of youth returned to her. The wrinkles disappeared, the complexion became improved, and her beauty returned to her. But why is it written "he took"? It ought to read, "he remarried." Said R. Jehudah b. Zebidah: Learn from this that he did with her as if he were marrying for the first time: he placed her under a canopy. Aaron and Miriam sang before her and the angels said: "The mother of the children shall rejoice."

Farther on the Scripture mentions the daughters of Z'lophchod according to their age, and here according to their wisdom.* And this is a support to R. Ami, who said: In the college the most scholarly has preference to age; at a banquet, however, age is considered. Said R. Ashi: Even in college, only *he* who excels in wisdom; and also concerning a banquet, only *he* who is of advanced age is considered (but if one has little wisdom and little more age than the others it does not matter).

In the school of R. Ishmael it was taught: All the daughters of Z'lophchod were equal in wisdom (and that they are mentioned in the Scripture differently means nothing).

R. Jehudah in the name of Samuel said: It was permitted to them to marry any one of any tribe, as it is written [Num. xxxvi. 6]: "To those who are pleasing in their eyes may they

* [Num. xxvii. 1:] Mahlah, Noah, Chaglah, Milcah, and Thirsah, while on the occasion of their mariage, Mahlah, Thirsah, Chaglah, Milcah, and Noah are written.

become wives." But what is to be said of that which is written farther on: "Only to the family of their tribe," etc.? This is to be considered as a good advice—that they should marry respectable men only who were fit for them, and not as a positive commandment.

Rabba objected: It is written [Lev. xxii. 3]: "Say unto them . . . in your generations." (How is this to be understood?) Say unto them, who were at the mountain of Sinai; and to "your generations" means that the same law shall apply to "all their generations." But why should it be mentioned, "the parents and their children"? Because there were some commandments for the parents only, and some applying to children only. And what are the commandments to parents only? The law [Num. xxxvi. 8]: "And every daughter that inheriteth any possession," etc. And what are the commandments to the children? Many, as *e.g.*, heave-offering, tithe, and all others imposed upon the land of Israel.

We see, then, that the cited verse 8 prohibited marriage to other tribes at that time only? Rabba himself answered his objection: The daughters of Z'lophchod were not included in the commandments to the parents.

The master says: "The commandments belong to the fathers, but not to the sons. But whence is this deduced? From [ibid., verse 6]: 'This is the thing,' which means, 'This thing shall be customary only in their generation.' So said Rabba." Said Rabba the minor (Zuti) to R. Ashi: According to this, should Lev. xvii. 3, in which the same expression is used, also be "for their generation" only? And he answered: There it is different, as verse 7 reads plainly: "A statute forever shall this be unto them throughout their generations."

There is a Mishna in Tract Taanith, p. 80: "Never were any more joyous festivals in Israel than the 15th of Ahb and the Day of Atonement," etc. Why is the 15th of Ahb a festival? Said R. Jehudah in the name of Samuel: In their days the tribes were allowed to intermarry.

(Here is repeated from Taanith, pp. 91, 92, q. v.)

The rabbis taught: There were seven men who encompassed the whole world since its creation until now: namely, Mesushelach has seen Adam the first, Shem has seen Mesushelach, Jacob has seen Shem, Amram has seen Jacob, Achiah the Shiloni has

seen Amram; Elijah the prophet has seen Achiah, and the latter (Elijah) is still alive. But how can you say Achiah had seen Amram? Is it not written [Num. xxvi. 65]: "There was not left of them one man save Caleb and Joshua"? Said R. Hamnuna: The tribe of Levi was excluded from the decree that all should die in the desert. As it is written [ibid., xiv. 29]: "In this wilderness shall your carcasses fall, and all that were numbered of you, according to your whole number from twenty years," etc., excluding the tribe of Levi, of which the number was from thirty years. But did not the same happen to other tribes? Is there not a Boraitha that Jair and Machir, the sons of Manasseh were born in the time of Jacob, and did not die until after the entering into the land of Israel? Said R. A'hab. Jacob: In that decree, they who were less than twenty, and more than sixty years old, were not included.*

The schoolmen propounded a question: How was the land of Israel divided? Was it divided into twelve parts for twelve tribes (and for each tribe as a whole), or was it divided severally? Come and hear! [Num. xxvi. 56]: "According as they are many or few" (hence it was divided among the tribes and not severally). And there is also a Boraitha: "In the future the land of Israel will be divided among thirteen tribes," while in the past it was divided only among twelve; and it was also divided by money (the explantion will be given farther on); and it was also divided only "by lot" and by the Urim v'tumim, as it is written [ibid., 56]: "by the decision of the lot." How so? Elazar was attired in the Urim v'tumim. Joshua and all Israel were standing by, and an urn containing the names of the tribes, and another, and the names of the boundaries of the land, were placed there; and Elazar, influenced by the Divine Spirit, would say thus: "Zebulon will now come out from the urn, and with him the boundary of Akhu." And then one of the tribe of Zebulon would put his hand into the urn and draw the name of his tribe, and then put his hand into another urn and draw Akhu. And then again Elazar, influenced by the Divine Spirit, would say: Now Naphtali will come, and with him the boundary Ginousar. And so it was with each tribe. However, the division in the world to come will not be equal to the division of

* In the text it is deduced by analogies of expression, and omitted as of no importance.

land in this world, as in this world, usually, the lot of one is a field of grain, and of another, one of fruits; but in the world to come, every one will have a share in the mountains, valleys, and plains. As it is written [Ezek. xlviii. 31]: "The gates of Reuben, one," etc., which means that every one will have equal land and shares, and the Holy One, blessed be He, Himself will assign the shares. As it is written [ibid., 29]: "And these are their allotted division, said the Lord Eternal." We see, then, that the Boraitha states that in the past the division was twelve parts to the twelve tribes. Hence it was divided among the tribes and not severally. Infer from this that so it is.

The master said: The land of Israel will be divided among thirteen tribes. Who will be the thirteenth? Said R. Hisda: The prince of Israel will be the thirteenth. As it is written [ibid., 19]: "And the laborer of the city (*i.e.*, the prince who bears the yoke of the whole city), whom men of all the tribes will serve." * Said R. Papa to Abayi: But why not say that to the prince would be given a city or the like, but not a thirteenth share of all the land ?† And he answered: This could not be borne in mind. As it is written [ibid., 21]: "And the residue shall belong to the prince, on the one side and on the other of the holy oblation, and of the possession of the city," etc. (Hence we see that a share was given to him by all tribes.)

The text says farther on: "It was divided by money." What does it mean? Shall we assume that he who had good land would pay to him who had inferior ? Does the Boraitha treat of fools, who take money instead of good land? Therefore it must be said that money was paid by those who had shares near to Jerusalem to those who took their shares far from Jerusalem (nearness to Jerusalem being preferable, as it was nearer to the Temple and farther from the land of the natives, therefore in less danger than if near to them). And on this point the following Tanaim differ. R. Eliezer said that they were rewarded with money, and R. Joshua maintains that this reward was in land, as, *e.g.*, compared with where a saah can be sown nearer to Jerusalem they took five saahs.

* Leeser's translation does not correspond.

† The text has "Rungur." The Aruch explains this as two words of the Persian language: "Run" means "day," and "gur" means "hirer"; and accordingly Rashbam construes "day-hirer," which does not fit very well. We have therefore translated in accordance with R. Gershom.

It says farther on: "It was divided only by lots." There is a Boraitha, "except Joshua and Caleb." What does it mean? That they did not take any land at all? Is it possible? It is said above that they took the shares of the spies, etc. Hence they took what did not belong to them. So much the more what did belong to them. It means they did not take by lots, but by the decree of heaven. As it is written [Joshua, xix. 50]: "By the order of the Lord did they give him the city which he had asked—Timnath Serah on the mountain of Ephraim." And Caleb—as it is written [Judges, i. 20]: "And they gave Hebron unto Caleb as Moses had spoken." But was not Hebron one of the cities of refuge? It means the suburbs and villages around the city.

MISHNA *IV.*: A son and daughter are equal concerning inheritance. However, a son takes two shares of the estate of his father, but not of the estate of his mother; and the daughters are fed from the estate of their father, but not from that of their mother.

GEMARA: What does the Mishna mean by its statement that they are equal concerning inheritance? Shall we say that they inherit together? Is it not said above that the son and all his descendants have preference over the daughter? Said R. Na'hman b. Itz'hak: It means to say that they are equal concerning an estate which is not yet fit for division. But have we not learned also this: That the daughters of Z'lophchod took three shares from the estate of their father, and when Z'lophchod died the land was not yet fit for division? And, secondly, what does the expression "however" mean? Said R. Papa: It means to say that they are equal in taking the share of a first-born. It means that when a first-born died childless they took his share. But this also was already stated concerning Z'lophchod; because he was a first-born, a double share belonged to him, which his daughters inherited, and in reference to him also we do not know what the expression "however" means. Therefore said R. Ashi: It means to say that the son and daughter are equal; in case one has bequeathed to him or to her all his estate, his will must be executed. Is this in accordance with R. Johanan b. Beroka? This is said farther on by him: If one has bequeathed to them who are legal heirs, his words must be listened to? And even if one should say that our Mishna is in

accordance with R. Johanan, and the succeeding Mishna is in accordance with them who differ with R. Johanan, is it not a rule that in such a case the Halakha does not prevail with the anonymous Mishna? And still, what means the word "however"? Therefore said Mar b. R. Ashi: It means that the son and daughter are equal in all cases concerning inheritance, be it the estate of father or mother. However, there is a difference between them, that the son takes two shares from the estate of the father, but does not from the estate of his mother."

The rabbis taught: It is written [Deut. xxi. 17]: "To give him a double portion," which means a double portion as against one brother. But perhaps it means a double portion from all the estate, and should be discussed thus: His share, when he has five brothers, should be equal to that when he has only one. As in the latter case he takes two shares from the whole estate, so it should be with the former. On the other hand, it can be discussed thus: His portion, when he has five brothers, should be equal to that when he has only one brother, in this respect, that as in the latter case he takes twice as much as his brother, so it should be in the former case, that he takes twice as much as all of them. Therefore it is written [ibid., 16] "Among his sons, what he hath." We see, then, that the Torah treats of the inheritance as among all one's sons; hence we have to take the second supposition, and not the first. It is also written [I Chron. v. 1]: "And the sons of Reuben, the first-born of Israel, for he was the first-born; but when he defiled his father's bed, his birthright was given unto the sons of Joseph the son of Israel, so that the genealogy is not to be reckoned after the first birth." And it is also written [ibid., 11]: "For Judah became the mightiest of his brothers, and the prince descended from him; while the first birthright belonged to Joseph."

Now the case of the first-born is mentioned concerning Joseph, and also concerning generations; as in the case of Joseph, it was only twice as much as each of the brothers. As it is written [Gen. xlviii. 22]: "Moreover, I have given unto thee one portion above thy brothers." So also is it with the case mentioned as to generations, that the first-born should have only one portion more than his brothers. It is written farther on: "Which I took out of the hand of the Emorite with my sword and with my bow." Did he indeed take it with sword

and bow? Is it not written [Ps. xliv. 7]: "For not in my bow will I trust, and my sword shall not help me." ? Therefore we must explain that "with his sword" he means prayer, and "with my bow" supplication.

To what purpose was it necessary to cite all the verses? Lest one say that the cited verse in the above Boraitha is needed for R. Johanan's above theory; therefore the other cited verse, etc.

Said R. Papa to Abayi: How is it inferred from the last cited verse that Jacob gave Joseph twice as much as to all his brothers? Perhaps he presented to him only a like estate? And he answered: To thy question the Scripture says [Gen. xlviii. 5]: "Ephraim and Manasseh shall be unto me as Reuben and Simeon. (Hence we see that he had twice as much as his brothers, who each were counted as one tribe, and he for two.)

R. Helbo questioned R. Samuel b. Na'hmeni: What is the reason that Jacob took away the privilege of the first-born from Reuben and gave it to Joseph? You ask for the reason. Does not the Scripture state the reason: "When he defiled his father's bed"? I mean to say: Why did he give it to Joseph? And he rejoined: I will tell you a parable to which this case is similar: There was one who had raised an orphan in his house. At a later period the orphan became rich, and thought, I will recompense my benefactor (because Joseph supported his father in the years of famine, therefore he recompensed him). Said R. Helbo to him: And how would it be if Reuben had not sinned: then Jacob would have given nothing to Joseph? Thereto I shall tell you what R. Jonathan your master said concerning this: The first-born had to come from Rachel. As it is written [ibid., 37]: "These are the generations of Jacob. Joseph." But Leah was preferred by virtue of her prayers. Because of the very chastity of Rachel, the Holy One, blessed be He, returned it to her. And what were Rachel's virtues? As it is written [ibid., 12]: "And Jacob told Rachel that he was her father's brother, and that he was Rebekah's son." The brother of her father? Was he not the son of her father's sister? It was thus: He asked her whether she would marry him, and she said, Yea, but my father is very shrewd, and you cannot persuade him. And to the question: What does it mean? she answered: I have a sister who is older than myself, and my father will not give me

to you while she is not married. Then he said: I am his brother in shrewdness. She then asked him: Is it, then, allowed to the upright to be shrewd? And he answered: Yea; as it is written [II Sam. xxii. 27]: "With the pure thou wilt show thyself pure, and with the perverse thou wilt wage a contest." And then he furnished her with some signs, that when she should be brought to him he would ask her for these signs, that he might be sure that she was not exchanged for Leah. Thereafter, when Leah was brought to him instead of Rachel, the latter thought, Now Leah will be ashamed, and confided to her the signs. And this is what is written [Gen. xxix. 25]: "And it came to pass that in the morning, behold, it was Leah," from which it is to be inferred that until the morning he did not know that she was Leah, because of the signs which Leah received from Rachel.

Abba Halipha Qruyah questioned R. Hyya b. Abba: Of Jacob's children who came to Egypt in sum you find seventy; however, if you will number them in detail, you will find only sixty-nine. And he answered: There was a twin with Dinah. As it is written [ibid., xlvi. 15]: "With Dinah his daughter." According to your theory there was a twin with Benjamin also, as the same expression was used? He said then: A valuable pearl was in my hand, and you were about to abstract it. So said R. Hama b. Haninah: This was Jochebed, whose mother was pregnant, and bore her before the walls (above, p. 263).

R. Helbo questioned again R. Samuel b. Na'hmeni: It is written [Gen. xxx. 25]: "And it came to pass, when Rachel had borne Joseph," etc. Why when Joseph was born? And he answered: Because Jacob our father saw that the descendants of Esau would become submissive to the descendants of Joseph only. As it is written [Obadiah, i. 18]: "And the house of Jacob shall be a fire, and the house of Joseph a flame, and the house of Esau a stubble." Helbo obejcted to him from [I Sam. xxx. 17]: "And David smote them from the twilight even unto the evening of next day," etc. Hence we see that they were submissive also to David, who was a descendant of Judah, and not of Joseph. Answered Samuel: The one who made you read the prophets did not do so with the Hagiographa, in which it is written [I Chron. xii. 21] * "And as he was going over to

* In the Hebrew Bible it is verse 21; in Leeser's, verse 20, because he put together verses 5 and 6.

Ziklag . . . captains of the thousands that belonged to Manasseh." Hence they were submissive to the descendants of Joseph. R. Joseph objected from [ibid., iv. 42 and 43]: "And some of them, even of the sons of Simeon, five hundred men, went to mount Seir, having at their head Pelatyah and Nearyah and Rephayah, and Uzziel, the sons of Yishi. And they smote the rest of the Amalekites that were escaped, and dwelt there unto this day." Said Rabba b. Shila: Yishi was a descendant of Manasseh. As it is written [ibid., v. 24]: And these were the heads of their family divisions: namely, Epher and Yishi."

The rabbis taught: "The first-born takes a double share in the shoulders, in two cheeks and the maw, in the consecrated things, and also in the improvement of the estate which was improved after the father's death. How so? If the father left them a cow which was hired to others, or she was pasturing on the meadow and she brought forth offspring, the first-born takes a double share. If, however, the heirs build houses or plant orchards, the first-born does not take a double share."

Let us see how was the case with the shoulders, etc. If already in the father's hand, it is self-evident; and if not when still alive, then it was not yet in existence; and there is a rule that a first-born does not take a double share in that which is fit, but not yet in existence? The Boraitha treats of a case where the priest has acquaintaince among people who usually give such a gift to him only, and the cattle were slaughtered while the father was still alive. And the Tana of the Boraitha holds that the above gifts are considered separated immediately after slaughtering, although they were not as yet taken off. It states farther on: If the father left them a cow, etc. Let us see: It teaches that the first-born takes a double share, even when it was under the control of others. Is it not self-evident that so much the more does the rule apply when it was pasturing on the meadow under proper control? It comes to teach us that the case "hired out to others" should be equal to pasturing in the meadow in this respect, that the heirs not needing to feed it, the improvement came of itself; but not when the heirs fed it, as then the improvement would be considered as made by the heirs, of which no double share is given. And this Boraitha is in accordance with Rabbi of the following Boraitha: A first-born

does not take a double share in the improvement of an estate which was improved after the father's death. Rabbi, however, said: I say that he takes, provided the improvements came by themselves, but not if improved by the heirs.

When they inherited a promissory note, the first-born took a double share; and if there was left a promissory note from the father, the first-born had to pay a double share. If, however, he says, "I will not pay double and also not take a double share," he may do so. What is the reason of the rabbis? It is written [Deut. xxi. 17]: "To give him a double portion." We see that the Scripture considers this a gift; and a gift is not considered unless it comes to one's hand. The reason of Rabbi is, because it is written "a double portion." We see, then, that the Scripture equals this to an ordinary share; and as concerning an ordinary share it is considered belonging to the heir even before it reaches his hand, the same is the case with the double share.

Said R. Papa: In case the father left a small tree, and pending the time of inheritance it became large; or unmanured earth, which has improved by itself, all agree that a double share is given. In what they differ is, in a case where the father dies when the seeds are as yet growing, and at the time of dividing the inheritance had been made into sheaves; or date-trees were as yet blooming, and at the time of dividing bore dates. According to one, it is to be considered an improvement by itself; and according to the other, it is considered changed to another article, of which a double share is not to be given.

Rabba b. Hana in the name of R. Hyya said: If one has acted in accordance with the decision of Rabbi, the act is valid; and the same is when he has acted in accordance with the decision of the sages. And the reason is because R. Hyya was doubtful whether the Halakha prevails with Rabbi when he differs with an individual, or it is so even when he differs with a majority (as in this case a majority differs with him). Hence it cannot be considered a wrong act if one has acted according to one of the decisions. Said R. Na'hman in the name of Rabh: It is prohibited to act in accordance with Rabbi [as he holds that the Halakha prevails with Rabbi against an individual only]. R. Na'hman, however, himself maintains that it is permitted to act in accordance with Rabbi [as he holds that the Halakha pre-

vails with Rabbi even against a majority]. Said Rabha: It is prohibited to act in accordance with Rabbi to start with; however, if one did so, his act is valid [and his reason is, that in such a case where Rabbi differs with the majority, the college has to teach in accordance with the majority to start with, but it cannot compel the one who acted in accordance with Rabbi to ignore his act].

It was taught: R. Na'hman taught in the Mechilta and Siphre, it is written [Deut. xxi. 17]: "Of all that is found in his possession," means to exclude the improvement which was made by the heirs after the father's death, but not that which improved by itself. And this is in accordance with Rabbi. Rami b. Hama, however, taught in the above-mentioned books that it excludes that which improved by itself, and so much the more that which was improved by the heirs. And this is in accordance with the sages.

R. Jehudah said in the name of Samuel: A first-born does not take a double share in a loan. According to whom is it? It cannot be in accordance with the rabbis, as they exclude him even from an improvement which is under the heirs' control; so much less of a thing which is not under their control. It must then be said that this is in accordance with Rabbi. But then the Boraitha which states: "If they inherit a promissory note, the first-born takes a double share in the loan, as well as in the interest," will not be in accordance with both the rabbis and Rabbi. It may be that Samuel's statement is in accordance with the sages; and nevertheless he has to teach this, lest one say, because he holds the promissory note in his hand, it is to be considered as already collected, he comes to teach us that it is not so.

"A message was sent from Palestine, that he takes a double share in the loan, but not in the interest." According to whom is this? It cannot be in accordance with the rabbis, for the reason stated above; and also not in accordance with Rabbi, who states in a Boraitha that he takes a double share in the loan, as well as in the interest? It is in accordance with the sages; but the Palestinians hold that a note is considered as already collected.

Said R. A'ha b. Rabh to Rabhina: Amimar happened to be in our city, and lectured: "A first-born takes a double share

in a loan, but not in the interest thereof. And Rabhina answered: The Nahardeans are in accordance with their theory elsewhere (both Amimar and R. Na'hman were from Nahardea), as in such a case Rabba said that if the heirs recovered real estate on a loan of their father a double share is given, but not if they collected money. R. Na'hman, however, holds the reverse: A double share is given if money is collected, but not on real estate. Said Abayi to Rabba: There is a difficulty concerning your decision, and also concerning the decision of R. Na'hman. Concerning your decision, the reason of which is to be supposed that their father left to them not *this* money now collected, as he left a promissory note only; but why should it not be the same with the estate? Did, then, their father leave real estate to them? Moreover, you, master, said that the reason given by the Palestinians concerning the case of a certain old woman (stated farther on) seems to you a right one, and this certainly contradicts your present decision. And concerning R. Na'hman's there is also the same difficulty, as his reason must be that there is no double share from the collected estate, because they did not inherit it from their father. Why should it not be the same with money, as the collected money was not of the inheritance of their father. Moreover, did not R. Na'hman say in the name of Rabba b. Abuhu, that if orphans have recovered real estate for a debt to their father, and there was a creditor to whom their father was indebted, the creditor might take away the estate which they recovered? (Hence he (R. Na'hman) considers the recovered estate as if left by the deceased—why, then, should there not be given a double share?) Answered Rabba :There is no difficulty concerning my statement, nor concerning R. Na'hman's, as we both have pointed out only the reason of the Palestinians by which, according to my theory, a double share is given from real estate, but not for money; and to R. Na'hman's it is the reverse. But our own opinion is, that neither from real estate nor from money is a double share given.

What was the case of the old woman, mentioned above? There was one who wrote in his will: " My estate shall be given to my old grandmother, but after her death it shall belong to *my* heirs." The deceased had a married daughter, who died while her husband and the deceased grandmother were still

alive; and her husband, after the death of the old woman, demanded the estate of his father-in-law, which was in the hand of his grandmother. And R. Huna's decision was: His claim is right, as the will states, "After her, my heirs shall inherit it," which is to be explained, "My heirs, and the heirs of my heirs." R. Anan's decision, however, was: His claim is not to be considered, as the will states, "to *my* heirs," and he was not his heir, but the heir of his daughter. And the Palestinians sent a message: The Halakha prevails with R. Anan, but not for his reason, as, according to his reason, even should his daughter leave a son, he would also not inherit; and this is not so, as the reason why the husband could not inherit is, that the law that the husband inherits from his wife holds good only when she left real estate, but not such an estate as was not as yet in her hands, but to come, which is not the case with a son, who inherits this also.

But shall we assume that R. Huna holds that one may inherit even an estate which was not as yet in the hands of his wife? Said R. Elazar: This case was discussed by great men, and the final decision, with its reason, will be rendered by a small man like my humble self. Every one who says "after thee" is to be considered as if he were to say "from to-day" (*i.e.*, the above will states "after her," which means the estate shall belong to "my heirs from to-day, but they are not to use the products so long as the old woman is alive"). Rabba, however, said: It seems to me that the reason given by the Palestinians is good as, according to that will, if the old woman should sell the estate, the sale would be valid.

R. Papa said: The Halakha prevails that a husband does not inherit a property which was to come in the future to his wife, and the same is the case with a first-born. He—the first-born—also does not take a double share in a recovered loan, in real estate or money; and, furthermore, if the first-born owes money to his father, the share which belongs to a first-born is to be divided, half to himself and the other half to his brothers. (The reason is, according to Rashbam, because this share is considered doubtful money, as it is not certain that the first-born is to be considered an occupant with respect to it, the supposition being that he has mortgaged all his estate for this debt to his father for the purpose that, in case of his father's death, he should take a double share. And there is a rule that doubtful

money is to be divided. And according to Gershom, the reason is because this loan is not to be compared with the loan of a stranger, as he who is an heir is also an occupant with respect to this debt, and this gives him title to a half of the share in question.)

Said R. Huna in the name of R. Assi: If the first-born protests when his brothers come to improve the estate left by their father, saying: "They shall delay improvement until after division," this protest must be considered in case they have not listened to him, and he takes a double share in the improvement also. Said Rabba: The decision given by R. Assi seems to me right in case, *e.g.*, they inherited vines, and the improvement was by gathering the grapes from the vines; or they inherited olives, and took them off from the trees: but if they made wine or oil thereof, the protest is not to be considered. R. Joseph, however, maintains: Also in the latter case, it is to be considered. Why? They inherited grapes, and now it is wine! As R. Uqba b. Hama said elsewhere: It means he shall receive a double share of the value of the grapes. The same is the case here. *I.e.*, if it happened that the vine was of less value than the grapes, he might claim his double share in the grapes, as he has protested that wine be not made of them. And where did Uqba say this? In reference to the statement of R. Jehudah in the name of Samuel, that if a first-born and his brother have inherited vines or olives, and gathered them, the first-born takes a double share of them, even when they were pressed. Pressed! Were they not first grapes, and now wine? Mar Uqba b. Hama explained that it means that the first-born receives his full double share of the value of the grapes, as explained above.

R. Assi said: If, at the dividing, the first-born took an equal share with his other brother, it is to be considered that he has relinquished his right. R. Papa in the name of Rabha said: He has relinquished his right in the divided estate only. R. Papi in the name of Rabha, however, said: It is to be considered that he has relinquished his right on all the estates. The reason of the former is because he holds that the first-born has nothing until the estate is divided. Therefore he can relinquish his right only in the divided ones. And the latter holds that as soon as the father dies the double share belongs to the first-born, even before division. And therefore, as he has relinquished his right

in the divided estate, so has he done with all others. Both statements, however, were not said by Rabha plainly, but were inferred from the following act: There was a first-born who sold all the estate belonging to him and his brother. The orphans of his brother were going to eat dates of the estate belonging to their father, which was in the possession of the buyers, who struck them. Their relatives said to the buyers: It is not enough for you that you have bought their estate without the consent of the father and the orphans, you dare to strike them. And the case came before Rabha, who decided that the act of the first-born was null and void. R. Papi explained that it means he did nothing with the share belonging to the ordinary brother, but concerning his own share, the sale was valid; and R. Papa explained the decision of Rabha, that the whole sale was null and void, because the first-born had nothing in the estate before it was divided.

A message was sent from Palestine: If a first-born sold out before division, he did nothing. Hence they hold that the first-born had nothing before the division. The Halakha, however, prevails that he has. Mar Zutra of Drishba had divided a basket of pepper with his brothers, and took an equal share, though he was a first-born; and when the case came before R. Ashi, he decided that as he relinquished his right concerning the pepper, it was also relinquished on all other property.

MISHNA *V.*: If one said in his will, "My son so and so, who is a first-born, shall not take a double share," or, "My son so and so shall not inherit at all with his brothers," he said nothing, as this provision is against the law in the Scripture. If, however, he has divided all his goods in his verbal will, and to some of his heirs he has bequeathed more and to some less, also equalizing the first-born, his will is valid, provided he has not mentioned in his will the word "inheritance." But if he said "because of inheritance," it is not to be considered. If there was a written will in which, in the beginning, middle, or end, was mentioned "a gift," all that it contains is to be listened to.

GEMARA: Shall we assume that our Mishna is not in accordance with R. Jehudah, who said in Tract Kedushin that a condition against the law in the Scripture, if in money matters, may be listened to? This Mishna can be even in accordance with him, as in that case the woman was aware of the law, but

relinquished her right. In our case, however, no one has relinquished.

R. Joseph said: "If one said in his will, 'My son so and so is *my* first-born,' he takes a double share. If, however, he said, 'My son so and so is a first-born,' he does not, as perhaps it was meant he was a first-born to his mother." There was one who came before Rabba b. b. Hana as a witness that he was certain so and so was a first-born. And to the question: Whence do you know it? he answered: Because his father called him "the first-born fool." And he said: This is no evidence, as people used to name a first-born to his mother first-born fool (*i.e.*, a first-born without right).

It happened that another came before R. Hanina as a witness for a first-born, and to the question: Whence do you know it? he answered: His father used to say, "Go to Sh'kh'at my son, who is a first-born, whose spittle cures eyes." But perhaps he meant a first-born to his mother? There is a tradition that a first-born of the father cures, and a first-born to his mother does not.

R. Ami said: If born ατμητος, and after perforation found to be a male, he does not take a double share, as it is written [Deut. xxi. 15], "first-born son," which means a son when born. R. Na'hman b. Itz'hak said that also the law of ibid., ibid. 18 does not apply to him. Amimar said: Such is not considered an heir at all, so that his share is not to be reckoned, and does not diminish the double share for the first-born. R. Shezby said: He must also not be circumcised on the eighth day. And R. Shrabyah said: The law [Lev. xii. 2] does also not apply to such (as in all the cited verses it reads a son or a male child). Said Rabha: There is a Boraitha in accordance with R. Ami: It is written a son, but not ατμητος; a first-born, but not a doubtful one. What does the latter part mean to exclude? That which Rabha lectured: If two wives of one have born two sons in a secret place which was dark, and it is not known who was born first, they may write a power of attorney each to the other (*i.e.*, if I am the first-born, I authorize you to take the double share for me; and if you are, then take it for yourself. And then one of them collects the double share and divides it with the other. Said R. Papa to Rabha: But did not Rabbin send a message: I have questioned all my masters about the law

in this case, and could get no answer from any of them; but it was said in the name of R. Janai that if they were recognized, and afterward they were mixed up again, then the stated power of attorney is to be written, but not otherwise. Then Rabha took an interpreter and announced in college: That which I said in my first lecture was an error, as in the name of R. Janai was said thus: That if they were already recognized and afterward mixed, then the above-mentioned power of attorney should be given to each by the other, etc.

The inhabitants of a village situated in a meadow sent the following question to Samuel: Master, teach us where it was certain to the people that so and so, from the children of so and so, was a first-born. Their father, however, said that another was the first-born. How is the law? And his answer was: They should write the above-mentioned power, one to the other.

According to whom was Samuel's decision? If he holds in accordance with R. Jehudah, let him say so; and if in accordance with the rabbis, let him say so? He was in doubt according to whom the Halakha prevails. And wherein is their differing? The following Boraitha: It is written [ibid., ibid. 17]: "Shall he acknowledge," which means, he shall introduce him to others (which is superfluous, this being already written in the previous verse). From this said R. Jehudah: One is to be trusted if he testifies, "This is my first-born son." And as he is trusted concerning a first-born, so is he also to be trusted to testify, "This is a son of a divorced woman," and of lost priesthood. The sages, however, say that he is not trusted. Said R. Na'hman b. Itz'hak to Rabha: According to R. Jehudah's theory, the above-cited verse is right; but according to the rabbis, to what purpose is it written? That in case of a doubt the father's acknowledgment is needed (but in a case of certainty to the people that one was a first-born, the father is not trusted in denying it). But to what does such a law apply? If concerning a double share, even if he was not a first-born, has the father not a right to bequeath him a double share in the manner of a gift? It means, in case the father acquired estates after acknowledgment (*i.e.*, if he is to be trusted, the acknowledged first-born takes a double share; and if not, he does not). But according to R. Meier, who said that one may grant a thing

not yet in existence, to what purpose is the above verse written? If property came to him while he was struggling with death.

The rabbis taught: If one was known to the people as a first-born, and his father said of another, that he was the first-born, he is to be trusted; and if one was known to the people as not a first-born, his father, however, testifying that he is, he is not to be trusted. The first part is in accordance with R. Jehudah, and the latter with the rabbis. R. Johanan said: If he has testified, "He is my son," and thereafter said, "He is my bondsman," he is not to be trusted. If, however, he testified, "He is my bondsman," and thereafter, "He is my son," he is to be trusted; as the first testimony is to be considered as if he should say, "He serves me like a bondsman." The reverse is the case when at the house of taxes. If he said before the officers, "He is my son," and afterwards, "my bondsman," he is to be trusted, as the first statement was to avoid the payment of taxes for his slave; but if he said before the officers, "He is my bondsman," and thereafter, "my son," he is not to be trusted. An objection was raised from the following: If he has served him like a son, and he acknowledged him as such, and thereafter he said, "he is my bondsman," he is not to be trusted; and the same is the case if he has served him like a bondsman, and was acknowledged by him as such, and thereafter he said, "He is my son": he is not to be trusted. (Hence this contradicts R. Johanan.) Said R. Na'hman b. Itz'hak: The Boraitha treats of when he was called "the slave who costs me a hundred zuz," and such a thing a father would not say of his son.

R. Abba sent a message to R. Joseph b. Hama: If one says, "You have stolen my slave," and the defendant says, "I have not," and to the question, "What, then, is he doing with you?" the defendant answers, "They sold him to me," or "gave him to me as a present; and if you wish, take an oath that it was not so, and then you can take him." And if the plaintiff did so (although, according to the law, the plaintiff had no right to take him with an oath, and for the defendant no other evidence or oath is necessary, if he would not say so), the defendant has no right to retract from his previous words.

What news came he to teach us? This we have already learned in a Mishna (Sanh. III., 2)? He comes to teach that

the differing of R. Meier and the sages is in a case equal to our case, and the Halakha prevails in accordance with the sages.

The same R. Abba sent a message to the same R. Joseph: The Halakha prevails that a creditor may collect from bondsmen belonging to orphans for their father's debt. R. Na'hman, however, said: He must not.

The former sent another message to the same: The Halakha prevails that to a second-cousin a third-cousin may be a witness (according to the law, relatives must not be witnesses, and Abba comes to teach that a third to a second-cousin, which means a great-grandson to a grandson, is not considered a relative in this respect). Rabha, however, said: The third-cousin is competent as a witness even to the first-cousin. Mar. b. R. Ashi had accepted a grandfather as a witness: the Halakha, however, does not prevail with him. The same sent another message to the same: If one can witness about an estate, and he became blind, he is no longer competent as a witness in the case. Samuel, however, maintains that he is, as it is still possible for him to mark the boundaries; but concerning a garment, he is not. R. Shesheth, however, maintains that even in case of a garment he is still competent, as he may mark the width and the length of the garment; but not in a piece of metal. R. Papa, however, maintains that even in such a case he is still competent, as he may be aware of the weight.

An objection was raised: If one were cognizant of a case before he became a son-in-law to one of the parties, and the case came before the court after he became a son-in-law; or he was cognizant of the case when he was still in good health, and afterward became dumb, blind, or insane, he is not competent as a witness. But if he was cognizant of the case before becoming a son-in-law, and thereafter married a daughter, but she died before the case came before the court; or he was in good health when he became cognizant of the case, and also when it came before the court, but in the time between he became dumb, blind, etc., and cured, he is fit to be a witness. This is the rule: If in the beginning or the end of the case he was not competent, his testimony is not to be considered; but if he was competent both at the beginning and the end, but not in the time between, his testimony holds good. This opposes

the statements of all the Amoraim as above, and the objection remains.

R. Abba sent another message to R. Joseph b. Hama: If one say, "Of one child among the others," he is to be trusted. R. Johanan, however, says: He is not. What does this mean? Said Abayi: If one says, "This child shall inherit all my estates," he is to be listened to in accordance with R. Johanan b. Beroka. R. Johanan, however, says: He is not to be listened to, in accordance with the rabbis. Rabha, however, opposed: Does the message say he shall or shall not "inherit"? It says "trusted." Therefore he explained it thus: "If one testifies to one child among his children that *he* is the first-born, he is to be trusted, in accordance with R. Jehudah. R. Johanan, however, says: He is not to be trusted, in accordance with the rabbis. The same sent another message to the same. If one said in his will, "My wife shall take an equal share in my estates with one of my sons," he is to be listened to. Said Rabha: It holds good only concerning the estate in possession when the will was made, but not concerning the estate bought thereafter, and also that she takes an equal share with one of his children at the time of dividing (*i.e.*, if his children increased in number after the will was made, she takes her share accordingly, but not according to the number of children at the time the will was made). The same sent another message to the same: If one holds in his hands a promissory note, saying, "Nothing was paid," but the borrower say, "The half is paid," and witnesses testify that the whole amount is paid, the borrower has to take an oath that he paid the half, and then the lender may collect the other half from unencumbered, but not from encumbered estate, as the people by whom the estate is encumbered may claim, "We rely upon the witnesses that the whole amount is paid." And even according to R. Aqiba (Middle Gate, p. 5), the borrower may be considered as one who returns a lost thing—that is, if there are no witnesses; but if there are, R. Aqiba also admits that a half must be paid, as it is to be supposed that the borrower has admitted the half when he has seen that there are witnesses, and he did not know whether they were for or against him, and therefore he admitted a half. Mar. b. R. Ashi opposed: Even in accordance with R. Simeon b. Elazar, who said that the admission is to be considered, as an admission in part, to which an oath is

given biblically, it is only when there are no witnesses who support him; but not in this case, where witnesses support him: he is certainly considered as if he returned a lost thing. Mar Zutra in the name of R. Simeon b. Ashi lectured: The Halakha prevails in accordance with all messages that were sent by R. Abba to R. Joseph b. Hama. Said Rabhina to R. Ashi: But does not R. Na'hman oppose one of the above messages (and there is a rule that the Halakha prevails with R. Na'hman concerning money matters)? And he answered: We read the above message: It must not be collected; and so also said R. Na'hman. If so, what does Mar Zutra mean to exclude by his statement that the Halakha prevails with all the messages? It cannot mean Rabha's above statement, as he does not oppose, but explain; and also not Mar b. R. Ashi's, who said that a grandfather is competent as a witness. It is already said there that the Halakha does not prevail with him. And should we say that it means to exclude Samuel's, R. Shesheth's, and R. Papa's concerning witnesses who were not competent at the time the cases came before the court, they also were already objected? Therefore, we must say he came to exclude R. Johanan's statement, and the opposition of Mar b. R. Ashi as above.

"*If it was mentioned in the beginning*," etc. How is this to be illustrated? When R. Dimi came from Palestine, he said in the name of R. Johanan: "There shall be given such and such a field to so and so, who shall inherit it"—this is considered as if "gift" were written in the beginning. "So and so shall inherit such and such a field, and it shall be given to him"—this is a gift in the end. "He shall inherit, and it shall be given to him to inherit"—this is considered "gift" in the middle. This, however, is if there were one man and one field—*i.e.*, "Such and such a field shall be given to A, and he shall inherit"; but if it was written, "The field on the east side shall be given to A, and he shall also inherit such on the west side," that concerning which inheritance is mentioned is not to be considered, as it is against the biblical law. The same is the case where there was one field and two persons, as, *e.g.*, "A shall inherit a half of such and such, and the other half be given to B." R. Elazar, however, maintains: The law holds good even in the latter cases, but not when there are two fields and two persons. When Rabbin came from Palestine,

he said: "If one wrote, "The field on the east side shall be given to A, and B shall inherit that on the west side"—according to R. Johanan, title is acquired, and according to R. Elazar it is not. Said Abayi to him: Your saying is right concerning R. Elazar, as he said above that when there are two fields and two persons the will is not to be considered; but it contradicts R. Johanan's above statement. And he answered: R. Dimi and I differ in the statement which was made in the name of R. Johanan. Resh Lakish, however, maintains that title is not acquired unless it is stated plainly, "A and B shall inherit such and such fields which I have presented to them as a gift." Then they should inherit (*i.e.*, as this will speaks about two persons, "gift" must be mentioned twice, so that it should constitute a gift for each of them). However, in this case the Amoraim still differ. R. Hamnuna maintains that the will in question holds good only as to one person and one field, but not as to one person and two fields, or *vice versa.* R. Na'hman, however, said that it holds good even as to one person and two fields, or *vice versa;* but not as to two persons and two fields; and R. Shesheth maintains that it holds good even in the latter case.

Come and hear an objection from the following: "My estates shall belong to you, and after you so and so shall inherit, and after him so and so shall inherit. If the first heir dies, title is given to the second; if the second dies, title is given to the third; but if the second dies while the first is still alive, the estate must be turned over to the heirs of the first one." Now, is not the case in that Boraitha equal to two fields and two men, and nevertheless it states that title is given? And lest one say that the Boraitha also treats of a case in which the persons mentioned are all direct heirs of the testator, and it is in accordance with R. Johanan b. Beroka's statement said above, then how is to be understood the latter part: "If the second dies, title is given to the third"? Did not R. A'ha b. R. Ivia send a message that in accordance with R. Johanan b. Beroka, if one says, "My estates shall belong to you, and after you to so and so," if the first was a direct heir, the second has nothing in the estate, as the expression is not to be considered as a "gift," but as an "inheritance"? And there is no interruption concerning an inheritance (*i.e.*, an inheritance cannot be halved so that a half of the inheritance shall belong to the direct heir and the other

half to the second, and also cannot be interrupted by the death of the regular heir, but is to be inherited by his heirs). Hence the Boraitha is an objection to the statements of all the Amoraim mentioned above, and so it remains.

Shall we then assume that it also objects to Resh Lakish's statement (*i.e.*, that the Halakha does not prevail with him)? How can this be imagined? Did not Rabha say that the Halakha prevails with Resh Lakish in certain three things, one of which being his statement made above? This presents no difficulty. The Boraitha cited speaks of when it was said in one speech (*i.e.*, there was no interruption between the words, " My estate shall belong to you, and after you," etc. It is therefore to be supposed that at the time he gave title to the first he also gave it to the second; and therefore all of them acquire title). But Resh Lakish treats of when it was said *with interruption* (*i.e.*, the statement of Resh Lakish that if there were two men and two fields title is not given, means that he said first, " This field shall be given to them," and after deliberating he said again, " shall inherit such a field," etc. Then the word " given " cannot be considered, in case of this other, and therefor title is not given). The Halakha prevails that all that is said in one speech is valid, except as to idolatry (*i.e.*, if one said this shall be for the idol, and without any interruption he said for something else, the thing in question is prohibited: because of the rigor as to idolatry, the first word which was spoken is considered). And the same is the case concerning betrothing—the first word is considered and the following is not, although it was in one speech.

MISHNA *VI.*: **If one says: " A** (who is a stranger to him) shall inherit my estate," and he has a daughter, or, " my daughter shall inherit," though he has a son, he said nothing, as the provision is against the biblical law. R. Johanan b. Beroka, however, maintains that if he has bequeathed to such persons as are fit to be his heirs, his will must be listened to; but if the persons are not fit to be his heirs, it is not to be considered.

GEMARA: From the expression of the Mishna, to a stranger instead of his daughter, or to the daughter instead of a son, it is understood if it was one daughter among others, or one son among others, he may be listened to. How, then, as to the latter part? R. Johanan b. Beroka said: If the persons

were fit to be his heirs, etc. Is this not the same as what the first Tana said? And lest one say that R. Johanan holds that even in the former case his will is valid, this cannot be, as the following Boraitha states: R. Ishmael the son of R. Johanan said: My father and the sages do not differ as to when one has bequeathed to a stranger instead of his daughter, or to his daughter instead of his son—he is not to be listened to; and wherein they do differ is, if he had bequeathed to one son or to one daughter among others, where according to my father his will is valid, and according to the sages it is not. (Hence there is a difficulty in understanding the expression of the Mishna?) If you wish, it may be said that because R. Ishmael found it necessary to say that they do not differ, there must be one who said that they do; and this was the first Tana. And if you wish, it may be said that the whole Mishna is in accordance with R. Johanan b. Beroka. But it is not complete, and should read thus: If one said: "A shall inherit my estate instead of my daughter," or "My daughter instead of my son," he said nothing. If, however, "My daughter so and so shall inherit my estate instead of my other daughters," or "my son instead of my other sons," he may be listened to; as R. Johanan b. Beroka declares that if he has bequeathed all his estate to him who is one of his direct heirs, his will is valid.

Said R. Jehudah in the name of Samuel: The Halakha prevails with R. Johanan. And so also said Rabha. And he added: What is the reason of R. Johanan b. Beroka? [Deut. xxi. 16]: "Then shall it be, when he divideth as inheritance among his sons what he hath," means that the Torah gave permission to the father to bequeath his estate to whichever of his sons he pleased. Said Abayi to him: This may be inferred from "that he shall not institute the son of the beloved as the firstborn before," etc. We see that this is said only about the firstborn, but not about the other sons. Nay, the latter is needed in addition to what we have learned in the following Boraitha: Aba Hanan in the name of R. Eliezer said: To what purpose is it written, "that he shall not institute," etc.? Because from the beginning of the verse it is deduced that permission is given to a father to bequeath his estate to whom he pleases. And one may discuss thus: An ordinary son has the privilege to take his share in the estate which is not yet fit for division as if it

were already fit, and nevertheless his father has the permission to ignore him; a first-born, who has no such privilege, so much the more he could be ignored. Therefore it is written, "He shall not institute," etc. But let the Scripture read, "he shall not institute," *only*. Why the first half of the verse? Because one may discuss thus: a first-born, who has not the privilege to take his double share from that which is not yet fit, has nevertheless the privilege that he cannot be ignored by his father. An ordinary son, who has the privilege, so much the more he should not be ignored. Therefore the beginning of the verse, from which we infer that the father is permitted to bequeath his estates to whom he pleases, was necessary.

Said R. Zrika in the name of R. Ami, quoting R. Hanina, who said so in the name of Rabbi: The Halakha prevails in accordance with R. Johanan b. Beroka: Said R. Abba to him: He did not say so, but he decided so in a case (which came before him.) And what is the difference? One holds preference is to be given to a statement (*i.e.*, if he states that so the Halakha prevails, it is a teaching forever; but if he was only acting so, it may be said that it was only according to the circumstances and we cannot take it for a rule forever). And the other holds that the preference may be given to an act.

The rabbis taught: A Halakha must not be taken for granted from a discussion or from an act, as one has no right to act unless he is told to do so. If he questioned his master and he told him such and such a Halakha is to be practised, then he may go and act so, provided he does not compare one case to another. But do we not compare one thing to the other in the laws of the Torah? Said R. Ashi: It means to say that he must not compare one thing to the other in the law of dietary (*i.e.*, an animal which is fit for eating biblically, if it has such a sickness that it cannot live twelve months, it must not be used). In Tract Chulin the diseases are enumerated, but such diseases as are not enumerated there are discussed whether in connection with lawful use or otherwise. And it is said that in such cases no comparison is to be taken in consideration unless known by tradition. As we have learned in a Boraitha, one must not say, concerning *Trepheth* (sickness which makes the animal illegal): This is similar to this. And one should not be surprised, as, if one cuts a piece of the animal from one side, it

may remain alive; and from another side, and it dies immediately.

R. Assi questioned R. Johanan: "If you, master, declare a Halakha to us, saying that such is the law, may we practise accordingly? And he answered: You shall not practise unless I tell you that such is for practice. Said Rabha to R. Papa and to R. Huna b. R. Joshua: If it should happen that my written resolution in a judgment should come to your hands, and you should see some objection concerning it, you shall not tear it before seeing me; for if I should have some reason to approve it I will tell you, and if not I will retract from it. But if the same should happen after my death, you shall not tear it, and at the same time you shall not take it for an example for other cases. You shall not tear it, because, if I were alive, probably I would approve it by a good reason; and shall not take it for an example, as a judge has to act only according to his conviction and to that which he sees with his own eyes.

Rabha questioned: How is it when one bequeaths his estates to one son among others, while he is still in good health? Shall we assume that R. Johanan b. Beroka's statement is concerning a sick person only, to whom the above-cited passage may apply, but not concerning one who is in good health (when it is not usual for one to divide his estate), or it does not matter, and one may bequeath his estate when he pleases? Said R. Mesharshia to him: Come and hear the following: R. Nathan said to Rabbi: You have taught the following Mishna: If one has not written in the marriage contract, "Male children borne of you by me shall inherit the amount mentioned in your marriage contract in addition to their share among their other brothers," he is nevertheless responsible in this respect, as this stipulation is made by the Beth Din (court). And Rabbi answered him: It is to be read in that Mishna, instead of "inherits," they shall "take" (which means a gift, and to this all agree that the father has a right). Thereafter, however, Rabbi said: My youth made me presume to contradict Nathan the Babylonian, as I see now—from the law that male children cannot collect their mother's marriage contract from encumbered estate—that Nathan, who declared the expression of the Mishna to be "inherited" was right, as if the expression were as I declared, why, then, should they not collect from encumbered estates also?

(Hence we see that one even in good health has the right to bequeath, etc., as the Mishna treats of one entering into marriage.) And who is the one who holds that one may give the preference to one of his sons among others, if not R. Johanan b. Beroka? Hence there is no difference if he does it while sick or in good health. Infer from this that so it is.

Said R. Papa to Abayi: Let us see. According to both, no matter if the expression in the Mishna is "inherit" or "take," why should this hold good? Is there not a rule that one cannot grant to some one a thing which is not as yet in his hands? And even according to R. Meir, maintains that one *may* do so, it is when the thing is in existence, but not as yet in his hands. Here, however, concerning the marriage contract the male children are not at all in existence, and in such a case even R. Meir admits that one cannot. And if the answer to this question should be: When the court made a stipulation, it is different. Say then that only in a case where the stipulation of Beth Din holds, one can write so, even when he is in good health, but not otherwise? And Abayi answered: After all, it may be inferred that the Halakha prevails in accordance with R. Johanan b. Beroka, from the expression "inherit," as it could state "take" to which there is no opposition; and the choosing of the expression "inherit" shows that it agrees with R. Johanan. Thereafter, however, said Abayi: "What I said above is incorrect, as there is another Mishna: If one has not written in the marriage contract, 'The female children whom you will bear by me shall remain in my house after my death, and shall be fed from my estates until they shall marry,' he is nevertheless responsible, as this is a stipulation of the Beth Din." Now we see that the two statements which ought to be written in the marriage contract are in one case because of inheritance and in the other because of a gift; and in such a case even the opponents of R. Johanan admit that it is lawful. Said R. Nihumi, according to others R. Hananiah b. Minumi, to Abayi: But how do you know that one Beth Din has enacted both the stipulations mentioned above? Perhaps they were enacted by two different Beth Dins?

R. Jehudah in the name of Samuel said: If one bequeath all his estates to his wife, it is to be considered that he makes her a guardian only. It is also certain that if he did so to his elder

son, he is considered a guardian only. But how is it if he has bequeathed all his estates to his younger son? It was taught: R. H'nilai b. Aidi in the name of Samuel said that the same is the case even when his younger son was in his cradle.

It is certain that if one allot in his will an estate to a son and a stranger, the son is considered a guardian and the stranger acquires title to that which is bequeathed to him as a gift. The same is the case if to his wife and a stranger. It is also certain that when he had bequeathed his estates to his bride who was betrothed (and yet not married), or to his divorced wife, that it is a gift and they acquire title. The schoolmen, however, were doubtful when he did so to his daughter if there were sons, or to his wife if he left brothers; and also to his wife, who had no children, but stepsons. Shall we assume that he appointed any one of them as guardian only, for the purpose that she should be respected by the heirs as long as she lived, or he made them a gift and they acquire title to the estate. Said Rabhina in the name of Rabha: The women mentioned above do not acquire title, as they are considered guardians; except the bride and also his childless wife if she is together with her stepsons. and therefore acquire title). R. Avira, however, said in the name of the same authority that all the above-mentioned women acquire title except his childless wife, if he left brothers; and also his childless wife if she is together with her stepsons.

(All that is said above treats of a will by a sick man?) Rabha questioned: How is it if this was done by one while in good health? Shall we assume that the above verse applies only to a sick man, whose last will must be respected, or the same is the case with one in good health, as for this purpose he so acted that his words should be respected from that day? Come and hear: If one writes the products of his estates to his wife, and thereafter he dies, she may collect her marriage contract from the estate itself. If he writes her a part of the estate —a half, a third, or a quarter—she may collect her marriage contract from the remainder. If, however, he had presented to her all his estates, and thereafter a creditor came holding a promissory note from the deceased, according to R. Eliezer the deed of gift shall be annulled and she shall remain by her marriage contract. The sages, however, maintain, on the contrary: The marriage contract shall be annulled and she shall remain by the

deed of gift (as it may be supposed that she has relinquished her right in the marriage contract because of the gift she has received). Should, however, evidence be brought that the gift was not lawful, she remains shorn on both sides of the head. R. Jehudah the baker told that such a case happened with his sister's daughter, who was a bride; and the case came before the sages, and they decided that her marriage contract should be annulled and she should remain by her deed of gift. And thereafter the latter, for some reason, was also annulled, and she remained shorn on both sides of the head. We see, then, that if it were not for the creditor with his note, title would be given to her. Now, how was the case? Shall we assume that it was by a will from a sick man? Is it not said above that she is considered a guardian only? We must then say that it was by one in good health. Hence Rabha's question can be decided affirmatively. Nay, it may treat of a will by a sick man; and, according to R. Avira, it can apply to all the women mentioned above, and according to Rabhina's explanation it may apply to a bride and a divorced wife. Said R. Joseph b. Minumi in the name of R. Na'hman: The Halakha prevails that the marriage contract shall be annulled as the sages declare. Shall we assume that R. Na'hman does not hold the theory of supposition? Have we not learned in the following: If one's son went to the sea countries, and was thereafter reported dead, and he in consequence bequeathed all his estates to some one else, the gift is valid, even if his son were alive and returned. R. Simeon b. Menasia, however, maintains that the gift is null and void, as if he were aware that his son was still alive he would not do so; and R. Na'hman said that the Halakha prevails with the latter. (Hence we see that R. Na'hman holds the theory of supposition.) Yea, his decision that the marriage contract should be annulled is also because of a supposition—that for the pleasure she has in announcing that her husband presented to her all his estates she has relinquished the right to her marriage contract.

There is a Mishna (Peah, III., 10): " If one has bequeathed all his estates to his sons, but has left to his wife a small portion of ground, she loses her marriage contract." How is this to be understood—because he gave her a parcel of ground, she lost her marriage contract? Said Rabh: It means when he made the ceremony of a *sudarium*, to give title to his sons with

her garment (*i.e.*, as she has given her garment for the purpose of dividing all his estate among his sons, it is to be supposed that she agreed to this act without any objection concerning her marriage contract). Samuel, however, maintains that it is sufficient if he did so in her presence and she kept silent (as if this were against her will she would protest). R. Jose b. Hanina, however, maintains: It speaks of when he said to her, "Take this ground instead of your marriage contract." And the Boraitha teaches that concerning a marriage contract it is more loosely constructed than for other creditors, as the latter do not lose their right unless they say plainly, "We relinquish our right," while concerning a marriage contract it is sufficient that she does not protest. There is an objection from a Mishna in Khethuboth: R. Jose said: "If she has accepted, although he wrote nothing, she has lost the right of her marriage contract." From which it is to be inferred that according to the first Tana the accepting is not sufficient unless he writes. Hence he requires both writing and accepting. And lest one say that all of the Mishna in question is in accordance with R. Jose (*i.e.*, if he wrote her a small parcel of ground, she loses her right). And R. Jose adds that the same is the case if she accepted, although it was not written. This cannot hold good, as there is a Boraitha in addition to that Mishna: Said R. Jehudah: All this holds good when she was present and had accepted; but if she accepted and was not present, she lost nothing of her right in the marriage contract. Hence this Mishna is an obejction to all the Amoraim mentioned above, and the objection remains.

Said Rabha to R. Na'hman: In the case in question we have heard the opinions of Rabh, Samuel, and R. Jose. Now I would like to know what is the opinion of you, master. And he answered: I am of the opinion that as soon as he made his wife a sharer with his sons (*i.e.*, at the time when he bequeathed his estates to his sons and set aside a piece of ground for her), she lost her marriage contract. (Provided she had not protested, as R. Na'hman holds with Samuel that if she kept silent it was sufficient.—Rashbam.) And so also it was taught by R. Joseph b. Minumi, in the name of R. Na'hman. Rabha questioned: How is it in a similar case when one is in good health? Shall we say only when he was sick, and she was aware that he had no other estates, therefore she relinquished? But when he was

still in good health she might think, "Why should I relinquish my right—he may in the future buy some other estates?" Or, on the other hand, having seen that he divided all his estates, she renounced her hope and relinquished? This question remains undecided.

There was one who wrote in his will, a half of my estate to one daughter, and the other half to another, and a third of the products to my wife. At that time R. Na'hman happened to be in Sura (where this will was made), and R. Hisda questioned him: How should such a case be decided? And he answered: Thus said Samuel: Even if he left to her the products of one tree only, she lost her right in the marriage contract. Said R. Hisda to him: Samuel's decision was when he gave her title to that which is attached to the ground; but in our case he left for her only fruit which was already gathered. And he rejoined: Then you speak of movable property. In such a case she certainly lost nothing. There was another man who said in his will: A third to one daughter, a third to another, and a third to my wife. It happened that one of the daughters died while her father was still alive (*i.e.*, as a father inherits from his daughter the deceased's share reverted to him, and this is similar, as he might buy some other estate after the division of his previous one), and R. Papa was about to decide that his wife had only the third bequeathed to her, but nothing in the third left from her daughter, for the reason that as soon as he has made her a sharer with his daughters the marriage contract was considered null. Said R. Kahana to him: Why should this case be different from the case that after making his will he bought other estate? Would she not have a right to it because of her marriage contract, as she has relinquished her right only for the sake of her daughters, when there was no other estate, but not in the estate he bought afterwards? The same is the case here: the inheritance of his daughter is to be considered as other estate bought.

There was another who divided all his estate but one tree among his wife and children, and Rabhina was about to say that the widow had a right to this tree only, if the amount of her marriage contract exceeded the value of the estate she received. Said R. Yimar to him: If she relinquished her right at the time the division took place, then she has no right even to this tree; and, on the other hand, if she has a right to this

tree, which means that she did not relinquish her right, then, by the same right by which she collects the excess from this tree, she may do so from the others which are in possession of the heirs.

R. Huna said: From all said above, it is to be inferred that in the case of a sick person who has bequeathed all his estate to a stranger, it is to be investigated if the latter is in some way fit to be called a direct heir. Then he takes it as an inheritance; and if not, he takes it as a gift. Said R. Na'hman to him: Why quibble? Say plainly the Halakha prevails in accordance with R. Johanan b. Beroka, as your decision is in accordance with him. However, perhaps you refer to a case which happened while one was dying and was questioned: To whom do you bequeath your estate—probably to so and so? and he answered: To whom else? And hence your statement that if the legatee is in some way fit to be an heir he takes it as an inheritance; and if not, he takes it as a gift? And he (Huna) answered: Yea, that is what I meant. But what is the difference whether he takes it as an inheritance or a gift? R. Ada b. Ahbha in the presence of Rabha said: If because of inheritance, then the widow of the deceased must be fed from the estate until she gets the amount belonging to her according to her marriage contract, which is not the case when he takes it as a gift. Said Rabha to him: Shall such a case make the position of the widow worse? In the case of an inheritance biblically, it is said that the widow must be fed from the estate; in the case of a gift, which is only a rabbinical enactment (as in reality one cannot present anything after death, but the sages enacted that the will of a sick person shall be considered as written and presented), shall she not have her right of support? Therefore Rabha explained: R. Huna's above statement agrees with the message which was sent by R. Aha b. Ivia: In accordance with the decision of R. Johanan b. Beroka (above, p. 285), an inheritance has no interruption, and goes direct to the heirs of the inheritor. Said Rabha to R. Na'hman: But the testator himself has controverted this with his saying, "after you, so and so shall inherit." He said so because he meant that he might do so. But the law dictates that there shall be no interruption; hence this stipulation is against the biblical law, and must therefore not be considered.

There was a man who said in his will: My estates shall belong to A and after A to B. A, however, was a legitimate heir, and when he died, B came and demanded the estate. And R. Elish in the presence of Rabha was about to decide that B's claim was a right one. Said Rabha to him: Judges who are arbitrators (*i.e.*, who do not decide according to the strict law, but mediate between the parties) judge so. This case, however, was the same as that concerning which R. Aha b. Ivia sent his message (that inheritance has no interruption), and he became ashamed. Rabha then applied to him [Is. lx. 22]: "I the Lord will hasten it in its time" (*i.e.*, Elish was ashamed that were it not for Rabha he would have acted against the law). And Rabha comforted him, in that Providence would not leave such an upright man to act wrongly, and therefore it so happened that he (Rabha) was present. Hence he had no need to fear the justice of his decisions in other cases.

MISHNA *VII.*: If one bequeathed his estates to strangers, leaving his children without anything, his act is valid; but he is condemned in the eyes of the sages. R. Simeon b. Gamaliel, however, maintains that if his children were not going in the right way he might be mentioned among the good men.

GEMARA: The schoolmen propounded a question: Do the rabbis differ with R. Simeon or not? Come and hear: Joseph b. Joezer had a son with bad habits; and he had also a measure of dinars. And because of his son, he consecrated the dinars to the Temple. The son went and married the daughter of Gadil, the master of the crowns for King Janai; and when his wife had borne a child, he bought a fish for her, and found in it a pearl. Said his wife to him: Do not carry it to the court of the king, as they will appraise it cheaply and will take it from you. Take it, rather, to the treasurer of the sanctuary; but do not mention any price for it, as if you should do so, you will have no right to change it thereafter, as there is a rule that concerning a sanctuary the upset price is considered final, and one has no longer right to retract, as after delivery to a commoner. He did so, and it was appraised by the treasurer at thirteen measures of dinars. The treasurer then said to him: We have now in the treasury only seven measures of dinars, as the taxes are not yet collected. And he answered: Let the remaining six measures be consecrated to heaven. And the treasurer re-

corded in his book: Joseph b. Ioezer brought to the sanctuary one measure, while his son has brought six. According to others, they wrote: Joseph brought to the sanctuary one measure, and his son took from it six measures. Now, as they wrote Joseph brought in, it is to be inferred that he acted rightly. But perhaps, on the contrary, as according to others they recorded "his son took out seven," it may be said that they considered the act of the father unlawful. Therefore from this Boraitha nothing is to be inferred. However, how should this question be decided? Come and hear: Samuel said to R. Jehudah: Do not transfer an inheritance from any one, even from a bad son to a good one; further, nor from a son to a daughter.

The rabbis taught: It happened in the case of one whose children had evil habits, that he bequeathed all his estates to Jonathan b. Uziel; and the latter sold a third of them, consecrated a third, and the remaining third he returned to the deceased's sons. And Shamai the Elder came to rebuke him for having so done with estates bequeathed to him, contrary to the will. And he answered him: Shamai, if you have the right to make null that which I have sold and that which I have consecrated, then you have also a right to take away the property which I have returned to the children. But as you have no right to do the former, you have no right to exclaim against my latter act (*i.e.*, if you consider me the owner of the estates bequeathed to me, then I may do with them what I please; and if I am not the owner, then also what I have consecrated should be annulled; and as you cannot annul the consecration, because the estate was bequeathed to me without any condition, consequently the estates are mine, and you cannot take away the property from the children.) And Shamai exclaimed: The son of Uziel has vanquished me! the son of Uziel has vanquished me! But what was his opinion before he came to rebuke him? He did so because of what happened in the city of Beth Horon. There was one of whom his father vowed that he should not derive any benefit from him; and when he made a banquet for the marriage festival of his son, he said to his neighbor: I make you a present of this courtyard and all that is prepared for the banquet, but only to the end that my father should be able to come and eat with us at that banquet. And his neighbor answered: If all this is mine, I consecrate it to heaven. And the

donor rejoined: I have not given you my property to be consecrated to heaven. Rejoined the neighbor: Then you have given all this to the end that your father and you shall eat and drink and be reconciled, and the sin shall rest on my head. And the sages decided that a gift which cannot be consecrated by the benefactor is not to be considered a gift at all.*

MISHNA *VIII.*: If one says: "This is my son," he is to be trusted; but, "my brother," he is not to be trusted. He may, nevertheless, share with him the inheritance of his father (when there are only two; but if there are three, the third, who does not recognize him as his brother, is not bound to share with him, and so he receives a half of the share of the brother who does recognize him). If the doubtful man dies, the estate must be turned over to him from whom it was taken. If, however, the deceased left other estates besides those he inherited with his brother, all the brothers share equally (because in the case of that one who testified that he is a brother to all, he has no right to the inheritance without the other brother).

GEMARA: The Mishna states: "'This is my son,' he is to be trusted." To what purpose is it stated? Said R. Jehudah in the name of Samuel: For the purpose that he may inherit from him, and to acquit his wife of Yeboom. But was it necessary for the Mishna to state that he might inherit from him? Is it not self-evident (*i.e.*, if its testimony was because of inheritance only, he could give it as a present)? It was necessary to state that he is to be trusted to acquit his wife of Yeboom. But this also we have learned elsewhere: If one says while dying: "I have children," he is to be trusted (and his wife is acquitted of Yeboom). If, however, he says: "I have brothers somewhere," and he was childless, he is not to be trusted (the intent being that his wife should be prohibited from remarrying). That Boraitha speaks of when the people were not aware of any brothers, and our Mishna came to teach that even when people were aware that one had brothers he is to be trusted if he testifies that such a person was his son.

R. Joseph in the name of R. Jehudah, quoting Samuel, said: Why was it said: One is trusted in testifying that he has a son; because if one testify that he has divorced his wife, he is to be trusted? And Joseph himself exclaimed: Lord of Abraham!

* In the text is repeated here from Tract Sukka, p. 36, which see.

He sustains a thing which we have learned in a Mishna by a thing which was not learned at all. Therefore, if this was taught, it must be thus: R. Jehudah in the name of Samuel said: Why is one trusted to testify, "This is my son" (and with this to acquit his wife of Yeboom)? because, if he likes, he can divorce her. Said R. Joseph again: Now, when we come to the conclusion that the theory of "because" may be used, we may infer that if one testify he has divorced his wife, he is to be trusted; because, if he wishes to make her free, he may give her a divorce then. When R. Itz'hak b. Joseph came from Palestine, he said in the name of Johanan: A husband is not trusted to testify that he has divorced his wife. R. Shesheth, when he heard this, made a gesture implying: Now the "because" of R. Joseph is gone. Is that so? Did not Hyya b. Abin say in the name of R. Johanan: The husband is trusted? This presents no difficulty. If his testimony is of a time long past, he is not to be trusted; and if of a short period of time (*e.g.*, a day or two before, so that this testimony should be used for the future), he is to be trusted. The difference is in case she was suspected of adultery a month before his testimony: If he is trusted, then she committed no adultery; and if not, the suspicion must be investigated.*

The schoolmen propounded a question: Should one's testimony for the time past, in which he is not to be trusted, be considered for the future (*e.g.*, if he testified in January that he had divorced in December, which does not hold good in case of the suspicion stated above, does it hold good for the time after the testimony took place? And the question is: Can one's testimony be divided—that for the past he should not be trusted, and for the future he should)? R. Mary and R. Zebid: According to one we may divide, and according to the other we may not. But why should this case be different from the following case stated by Rabha: If one testifies that his wife has committed adultery with so and so, if he has another witness, the man can be put to death in accordance with the law that two witnesses have to testify to a crime—we conjoin his testimony to the stranger's and they are considered two witnesses; but his wife cannot be executed, as it is unlawful that

* The commentators try to explain at length with illustrations, which we omit as of no importance.

a husband should be a witness against his wife (hence we see that the testimony is divided: for one it is considered, and for the other it is not)? It may be said: Concerning two we do divide, but not concerning one person.

There was one who, while dying, was questioned concerning his wife (*i.e.*, he was childless, and they questioned him if his wife was divorced from him, so that she might remarry after his death or she remained liable to Yeboom)? And he answered: She is fit to marry even the high priest * (*i.e.*, I have divorced her). Said Rabha: We may trust him, as it is said above by Hyya b. Aba in the name of R. Johanan: A husband is to be trusted in testifying that he has divorced his wife. Said Abayi to him: But did not R. Itz'hak b. Joseph in the name of R. Johanan say: He is not to be trusted? And Rabha rejoined: But have we not explained above, that one speaks of the past, and the other of the future? Rejoined Abayi: Shall we rely upon an explanation in such a rigorous law as marriage is? Then said Rabha to R. Nathan b. Ami (before whom the case came: Investigate this matter (as probably Abayi is right). There was another, of whom it was known to the people that he had no brothers, and so, also, he testified while dying. However, it was murmured by some that he had brothers in some other country. And R. Joseph decided: There is no risk in allowing his widow to remarry, as he not only said so while dying, but it was known to the majority. Said Abayi to him: But is it not murmured that there are witnesses in the sea-country that he has brothers? (Answered R. Joseph:) But at present there are no witnesses, and in a similar case, R. Hanina said elsewhere: Should we prohibit a woman from marrying because some say that there are witnesses in the north? Rejoined Abayi: If Hanina had decided leniently concerning a woman in captivity, whose prohibition to marry a priest is rabbinical only, should we compare our case, which is biblical, if the childless deceased left brothers? And Rabha said to Nathan b. Ami, who had charge of this case: Investigate this matter.

"'*This is my brother,' he is not.*" But let us see what the

* The commentators find difficulty in explaining the meaning of this expression. It seems to us, however, very simple. He meant: I divorced her before having intercourse with her, and she is still a virgin, whom a high priest may marry.

other brothers say. If they admit that the one in question is their brother, why should he share with one only? We must then say that they deny it. Then how is the latter part, "If he had estates from other sources, the brothers have to share," to be understood? They do not deny that he was their brother. It means when the others say, "We do not know whether he is a brother or not."

"*It must be turned over to him,*" etc. Rabha questioned: How is it if the same estate were improved of itself—*e.g.*, if it were a young tree, and it grows up, etc., there is no question of the improvement being through the labor of the deceased, as this is similar to the case in which one got estates from other sources; but the question is: If the improvement was of itself? This question remains undecided.

MISHNA *IX.*: If one dies, and a διαθηχη was tied to his body, it is not to be considered at all. If, however, while sick he had submitted it to some one, be he his direct heir or not, it must be listened to.

GEMARA: The rabbis taught: What is to be considered a διαθηχη? (Repeated here from Middle Gate, p. 40, from the quotation "Wills" to the end of the paragraph. See there.)

Rabba b. R. Huna was sitting in the balcony of Rabh, and declared the following in the name of Johanan: If a sick person said to witnesses: "Write, and give a mana to so and so," and before they did so he dies, it must not be listened to, for the reason that probably the deceased had in mind to give title in the case by a deed only; and as such a deed cannot be written after death, nothing can be done. Said R. Elazar to the disciples who were also sitting there: Bear in mind this Halakha, as it is for practice. R. Shezbi, however, said: The reverse was the case: R. Elazar declared the Halakha, and R. Johanan told them to bear it in mind, etc. Said R. Na'hman b. Itz'hak: It seems to me that R. Shezbi is right, as, if R. Elazar declared the Halakha, it was necessary for R. Johanan to approve it; but if Johanan declared it, was it then necessary for Elazar to give his approval to what his master said? And secondly, from the following, it is to be inferred that Elazar had declared the above, namely: Rabin sent a message in the name of R. Abuhu: It shall be known to you that R. Elazar sent a message to the sages in exile, in the name of our master (Rabh): If a sick person said,

Write, giving a mana to so and so, and it was not done until he had died, nothing is to be done (for the reason said above). (R. Jehudah in the name of Samuel, however, said: They may write and give.*) But R. Johanan said (though the Halakha so prevails): It must, nevertheless, be investigated. What shall be investigated? When R. Dimi came from Palestine, he said the following two things: (a) A will which is written at a later period abolishes a will written previously (if title was not given by a ceremony of a sudarium). (b) If a sick person said, "Write, giving a mana to so and so," and died, it must be investigated, whether with the expression "write" the testator meant to strengthen the act. In that case it may be done; and if not, it must not. R. Aba b. Mamel opposed from the following: If one in good health said to witnesses, "Write, giving a mana to so and so," and suddenly died, nothing is to be done. From which it is to be inferred that if this were said by a sick person it would be listened to? He himself answered thereafter: If the expression "write" was only to confirm the act, then it may be listened to. But how can we know what he meant? As R. Hisda said elsewhere: If written, and confirmed by the ceremony of a sudarium, no retraction can take place. So also in our case. If it was said by the sick person, "Give to him, and also write," then the last expression may be considered as a confirmation of this act; and it may be so done.

It was taught: R. Jehudah in the name of Samuel said: The Halakha prevails, they may write and give; and so also said Rabha in the name of R. Na'hman.

MISHNA *X.*: If one wishes to bequeath his estate to his children (*i.e.*, it speaks of one who remarries and does not wish that the children by his first wife should lose their share in his estate after his death), he must write: I bequeath my estate to them from to-day and after my death (*i.e.*, the estate belongs to them thenceforward, but not the products until after his death). So is the decree of R. Jehudah. R. Jose, however, maintains: It is not necessary to write "from to-day."

If one wrote: "I bequeath my estate to my son from to-day, and after my death," he has no longer any right to sell his estate, because it is bequeathed to his son; and his son, also, has

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* Transferred from 152a.

no right to sell it because it is still under the control of his father. If, notwithstanding this, the father has sold, the products thereof are sold until he dies. If the son, however, sold, the buyer has nothing therein until the father dies.

GEMARA: But how if he has written "from to-day and after my death"? Have we not learned in a Mishna: If one wrote in a divorce, "from to-day and after my death," it is considered a doubtful divorce, so that after his death his widow cannot marry his brother, but must perform the obligation of Halitzah. (This is no objection) as there we are doubtful as to the explanation of his words. Does he mean by the words, "after my death," to be a condition (*i.e.*, if I die she shall be divorced from to-day), or as a retraction (*i.e.*, the last words retract the former), and therefore she cannot marry. Perhaps the divorce was valid, and it is prohibited to her to marry a brother-in-law. But she is under the obligation of Halitzah. Perhaps the divorce was invalid. In our case, however, it is to be explained, the body of the estate is bequeathed "from to-day," but the products, "after my death."

"*R. Jose . . . It is not necessary,*" etc. Rabba b. Abuhu became sick. R. Huna and R. Na'hman came to make him a sick call. Said R. Huna to R. Na'hman: Question him whether the Halakha prevails with R. Jose. And he answered: I am not aware of the reason of his statement. To what purpose, then, should I ask if the Halakha so prevails? Rejoined R. Huna: I will tell you the reason later, and meanwhile you may question him with whom the Halakha prevails. And he did so. And Rabba answered: So said Rabh: The Halakha prevails with R. Jose. When they went out from him, said R. Huna: The reason of R. Jose's statement is because the date of the deed testifies to whom from that day the estate belongs. And so also we have learned plainly in a Boraitha.

Rabha questioned R. Na'hman: According to R. Jehudah, who requires that there shall be written "from to-day," etc., how is it, if this was made with the ceremony of a sudarium? (Shall we assume that as the above ceremony was already performed title is acquired, and nothing further is to be added; or, even then, it must be written in the deed "from to-day," etc.?) And he answered: In such a case it is not necessary. R. Papa, however, maintains that there is a difference in the

tenor of the deed. If it was written: We have secured the ceremony of a sudarium, which he agreed to and made, then nothing is needed to be added. If, however, it was written: He agreed, and we performed the ceremony, then it is necessary to write, "from to-day," etc. (and the reason is, that the latter expression may be explained as intimating that he agreed that possession should come after death, and thereto we have joined the ceremony of a sudarium). R. Hanina of Sura opposed: Are there such things as we do not know, and we must rely upon the scribes? The scribes of Rabha and of Abayi were questioned, and it was found that they were aware of the difference mentioned above. R. Huna b. R. Joshua, however, said: There is no difference between the two versions mentioned above; as to either of them, nothing is to be added. But if "sudarium" was not mentioned in the deed at all, and there was a memorandum: *e.g.*, "The undersigned testify that a memorandum was made by so and so," etc., then, according to R. Jehudah, "from to-day," etc., is needed. Said R. Kahana: I repeated this discussion before R. Zebid of Nahardea, and he told me: You have learned this so. We, however, have learned it as follows: Said Rabha in the name of R. Na'hman: If a sudarium is mentioned, no matter what version was used, nothing is needed to be added; but in respect to a memorandum (illustrated above) R. Jehudah and R. Jose differ.

"*I bequeath my estates to my son,*" etc. It was taught: If the son sold out and then died while the father was still alive, according to R. Johanan the buyer has nothing in it; and according to Resh Lakish, title is given to the buyer after the father's death. The reason of their difference is, because the former holds that the sale of the products ought to be held similar to the sale of the body; and as the products could not be sold by the son, as he had nothing in them so long as the father was alive, so he could not sell the body. And the latter holds that the body is not subordinate to the products; as the body belonged to the son, the sale is valid.

R. Johanan objected to Resh Lakish from the Boraitha stated above, p. 289, which says: The estate must be turned over to the heirs of the first; and according to you, it ought to be to the heirs of the testator. And he answered: It was already ex-

plained by R. Hoshua in Babylon that there was a difference when the testator said plainly "and after you." And so also it was answered by Rabh, to a contradiction made before him by Rabha b. R. Huna. But have we not learned in a Boraitha that the estate must be turned over to the heirs of the testator? In the resolution of this case, Tanaim differ: "My estates are bequeathed to you, and after you to B; A sells out, and consumes the amount. B has a right to recover it from the buyers after the death of A. So is the decree of Rabbi. R. Simeon b. Gamaliel maintains B has a right only to what remained from A." A contradiction was made from the following: My estate is bequeathed to you, and after you to B; A may sell and consume it. So is the decree of Rabbi. R. Simeon b. Gamaliel, however, maintains that A has a right to the products only. Hence Rabbi and R. Simeon contradict themselves in the two Boraithas. This presents no difficulty. The statement of Rabbi in the later Boraitha is concerning the products only; and the statement in the first Boraitha is concerning the body. There is also no contradiction in R. Simeon's statements, as his statement in the last Boraitha means that so is the law to start with; and his statement in the former means, if it were already done.

Said Abayi: Who is called a crafty villain? He who advises A to sell the estate (bequeathed to him for his life only), relying upon R. Simeon b. Gamaliel's decision. Said R. Johanan: The Halakha prevails with R. Simeon b. Gamaliel. He, however, admits that if A gives the same as a present to C, when he is dying, he has done nothing. And what is the reason? Said Abayi: Because C ought to acquire title to it only after the death of A. But at that time B had already acquired title, as it was bequeathed to him after A's death. But did Abayi say so? Was it not taught: To a gift presented by one who is dying, at what time is title given? According to Abayi, with the death; and according to Rabha, after death. Hence C ought to have the preference, according to Abayi's last statement, as to B it is bequeathed after death? Abayi has retracted from his last statement. But do you know where he has retracted from the last statement? Perhaps he has retracted from the first. Yet it cannot be borne in mind that there is a Mishna which states as follows: If one should say:

"This shall be your divorce if I should die"; or, "It shall be yours if I should not recover from this sickness"; or, "After my death," he said nothing. (Hence this Mishna is a direct contradiction to Abayi's statement that title is given *with* the death. If it were so, the divorce would be valid when he said: This shall be your divorce when I die. And therefore it must be supposed that he retracted from the later statement.)

Said R. Zera in the name of R. Johanan: The Halakha prevails with R. Simeon, even in case in the estate in question there were included bondsmen, and they were freed. Is this not self-evident? Lest one say that the testator may claim: "I did not bequeath to you my estate, you shall transgress * with them," it came to teach us that it does not matter. And R. Joseph said in the name of the same authority: Even if he had made of them shrouds for a corpse. Is this not self-evident? Lest one say that the testator may claim: "I did not give it to you for the purpose that you should make from it things from which it is prohibited to derive any benefit," he came to say it does not matter.

R. Na'hman b. R. Hisda lectured: If one said: "This citron is given to you as a gift, and after you to B," and A became seized of it, and performed his duty as owner on the first day of Tabernacles, it depends upon the difference between R. Simeon and Rabbi whether it was done lawfully. R. Na'hman b. Itz'hak opposed: The above Tanaim differ in the case whether the sale of the products be considered the same as the sale of the body (explained above), or not? But in our case, if it was not presented to him to the end that as owner he should perform the duty of that day, for what, then, was it given to him? Therefore it must be said that all agree that A, who did as owner his duty of that day, acted lawfully. But if he has consumed or sold it, it depends upon the difference between the Tanaim mentioned above whether the sale is valid, or A has to pay for it.

There was a woman who had a tree on the estate of R. Bibbi b. Abayi; and each time she went to gather the products of the tree, it made him angry. She then sold it to R. Bibbi for his life, with the condition that after his death it should be

* The ancient Hebrew as well as the Roman law prohibits the freeing of a slave without good reason; and also the deriving of benefit from shrouds, or anything else belonging to a corpse.

turned over to her or her heirs. He, however, transferred it to his minor son (to the end that the tree should remain his for a long time, as according to the law a minor acquires but cannot give title, and this act was according to R. Simeon b. Gamaliel). Said R. Huna b. R. Jehoshua: Because you are weak you speak weak words.* Even Simeon b. Gamaliel admits that his statement holds good only when he transferred it to some one else; but not if to himself.

Rabha said in the name of R. Na'hman: If A said to B, "I give you this ox as a present, with the stipulation that you shall return it to me," and B consecrated it and afterward returned it, the ox is consecrated, and B has fulfilled his duty. Said Rabha to R. Na'hman: But, after all, what has he returned to him? The ox being consecrated, he cannot derive any benefit from it. Rejoined R. Na'hman: But did B depreciate the value of the ox? Has he not returned it as he got it? R. Ashi, however, said: It must be investigated how the stipulation reads. If "You shall return it," then he acted correctly, as he did return it. But if "You shall return it *to me*," which means it shall be fit for me, but if he has consecrated it, it is no more fit for him. Consequently it cannot be considered returned.

R. Jehudah said in the name of Samuel: If A has bequeathed his estate to B, and B says "I do not want it," he nevertheless acquires title, even if he still protests he does not want it. R. Johanan, however, says: He does not. Said R. Abba b. Mamel: And they do not differ. If B protests at the very time the deed of gift was given to him, he does not acquire title; but if he first kept silent, and afterward protested, title is acquired.

The rabbis taught: If a sick person said, "Give two hundred zuz to A, three hundred to B, and four hundred to C," it must not be understood that he who is mentioned first in this deed acquires title to that amount; and, therefore, if a creditor comes with a promissory note of the deceased, it may be collected from all of them. If, however, it reads, "Two hundred zuz to A, and after him three hundred to B, and after him four hundred to C," then the one who is mentioned first in

* The commentators' explanation of this is that Abayi was of the family of Eli, who according to tradition were short-lived. Therefore the word "weak."

the document acquires title to that amount; and the promissory note must be collected from the last. And if the money he receives does not suffice, it must be collected from the one mentioned before him; and if his does not suffice, it must be collected from the first.

The rabbis taught: If a sick person said, "Give two hundred zuz to my first-born son so and so, who is worthy to have them," he may take them, and also the double share belonging to a first-born. If, however, the sick person said, "Give him such an amount for his first-born privilege, the son has the preference to choose which is better for him—the amount bequeathed or the double share prescribed for him. The same is the case if the sick person said, "Give two hundred zuz to my wife, who is worthy of them." She takes them and also what belongs to her according to her marriage contract. If, however, he said, "Give them to her for her marriage contract," she has the choice of taking them or that which belonged to her according to her marriage contract. If a sick person said, "Give two hundred zuz to my creditor B, who is worthy of them," he may take them, and also collect what the deceased owes him. But if he said, "Give them to him for my debt," then he takes it for the debt.

How is the last sentence to be understood—because he said he is worthy of them, he shall take both the two hundred zuz and his debt? Why not explain, as he had a right to them because of my debt? Said R. Na'hman: Huna told me that this Boraitha is in accordance with R. Aqiba, who is particular concerning the version as it is said (Chap. IV., Mishna 2): R. Aqiba admits, etc. From which we see that he gives his attention to a superfluous word. The same is it with the case in our Boraitha—that the words, "as he is worthy of them," are superfluous; and according to R. Aqiba they are said because he wants to add them to his debt.

The rabbis taught: If a sick man said, "I have a mana with so and so," the witnesses may write this, although they are not aware that such is the case. And therefore, when his heirs come to collect from the debtor, it is for them to bring evidence. So is the decree of R. Meir. The sages, however, maintain that the witnesses must not write unless they are aware that so it is. And therefore, the heirs may collect this debt without any

other evidence. Said R. Na'hman: Huna told me: The Boraitha must be so understood. R. Meir said: They must not write; and the sages: They may. And even R. Meir said so because he feared that the court, before which the case of "collection" should come, would err, and approve the deed without any investigation, if the witnesses who signed the deed testified only to what the deceased said, or they were aware that the contents were true. And the sages maintain: Usually a court does not err, and can be relied upon to give proper attention to this matter. Said R. Dimi of Nahardea: The Halakha prevails that it must not be feared the court will err. But why should this differ from the following case stated by Rabha: The ceremony of Halitza must not be made by the court, unless they know the persons? And the same is the case with a denial (of a woman, betrothed in childhood, who on arriving at majority denies the marriage before the court; and according to the law she may remarry without any other act). And therefore the witnesses who were present may write a testimony of this act, although they themselves did not know the persons. And the reason why the court must not perform the ceremony of Halitza, unless they know the persons, is because it is to be feared that the court before which she may come to remarry will not investigate whether she is the same person who had to take Halitza. (Hence we see that error by the court is to be feared?) This is no objection. A court usually does not investigate the act of a former court; but the acts of witnesses, it does.

MISHNA *XI.*: The father has a right to pluck the products of trees which are found on the estate bequeathed to his son, after his own death, and may present them to whom he pleases. If, however, the plucked fruit remains after his death, they belong to his heirs.

GEMARA: The plucked fruit only, but not that which is attached to the trees, although ready to be plucked (*i.e.*, such belongs to the son, to whom the estate is bequeathed after his father's death)? Have we not learned in a Boraitha that in case the fruit was ripe, under the control of the bequeather, it belongs to the buyer if he sold it before his death? Said Ula: This presents no difficulty. Our Mishna treats of when he bequeathed to his son, and it may be supposed that his last will

was that from that remaining on the tree his son should derive benefit; and the Boraitha speaks of when he has bequeathed his estate to a stranger.

MISHNA *XII.*: If he left grown-up and minor sons, the grown ones have no right to derive any benefit on account of the minors, nor have the minors a right to same on account of the older brothers (*e.g.*, the older ones have no right to dress themselves at the expense of the inheritance before the division, nor should the minors be supported from the inheritance); but they must divide the inheritance equally. If the older ones have married at the expense of the inheritance, the same amount must be added to the shares of the minors. However, the latter have no right to claim for any addition if their older brothers have married while their father was still alive, as the amount expended for their marriages is considered a gift from their father.*

The very same is the case with grown-up and minor daughters. All of them must receive an equal share. However, in one respect preference is given to daughters who were left together with grown-up sons. The daughters must be fed from the inheritance at the charge of the sons, which is not the case with minor daughters who were left together with grown-up ones.

GEMARA: Rabha said: In the case of the oldest brother who has dressed himself at the expense of the house before division, his act is lawful (and nothing is to be deducted from his share). But does not our Mishna state: "Grown-up ones have no right to derive any benefit," etc. Our Mishna speaks of when they are idle, and do nothing for the benefit of the house. If idlers! Is it not self-evident? Lest one say that, nevertheless, they would be pleased that their brother should be nicely dressed, it comes to teach that it is not so.

"*Grown-up and minor daughters*," etc. R. Abuhu b. Genibh sent a message to Rabha: Let the master teach us: How is it if a woman has borrowed money, consumed it, and thereafter she married without paying her debt, and brought estates with her at marriage? Must her husband pay her debt, or not? Shall we assume that the husband is considered a buyer of the estates brought, consequently he has not to pay, as the law

* So is it explained in the Gemara by R. Jehudah.

dictates that a loan made without a deed cannot be collected from a buyer; or is he considered an heir, and must pay his wife's debts, even when contracted without any deed? And Rabha answered: This we have learned in our Mishna: If the grown-up daughters have married, the minors may do the same. Is this not to be interpreted that if the grown-up daughters have borrowed money from the estate also belonging to the minors, the minors shall do the same by collecting the debts from their sisters' husbands? Nay! The Mishna means to say that they take the same amount from the inheritance as their sisters did. But this is not so. As R. Hyya taught plainly: If the older ones have married at the charge of the inheritance, the minors may collect the amount from their husbands? (Hence we see that the husband is considered an heir, and must pay?) This cannot be taken for support, as a law made in connection with an inheritance for the purpose of marriage is considered as public and known to the people, and also in the light of a deed which is to be collected from encumbered estates.

Said R. Papa to Rabha: Why did you try to decide the question from R. Hyya's Boraitha? Was the same not decided by Rabbin's letter: If one dies leaving a widow and a daughter, the widow must be supported from the deceased's estate. If the daughter has married or dies, the widow is still to be supported from the estate. Said R. Jehudah the son of R. Jose's sister: Such a case came before me, and it was decided that a widow must still be supported from the estate. Now, if the husband is considered an heir, it is correct that his widow should be supported from his estate; but if he is considered a buyer, why should she be supported from his estate? Does not a Mishna state that for the support of a widow and daughters, encumbered estate must not be taken away? Said Abayi: What news has Rabbin sent in his message? Have we not learned this in a Mishna: "The following is not to be returned in the jubilee year: The double share taken by a first-born and the inheritance of a woman taken by her husband"? Hence we see that the husband is considered an heir? Said Rabha to him: And even after he has sent the message, do we then know that it is in accordance with the law? Did not R. Jose b. Hanina say (Middle Gate, p. 255) that the husband takes away

from the buyer? Therefore said R. Ashi: The rabbis have enacted that in some respects the husband should be considered as an heir, and in some respects as a buyer; and have so done on his account. Concerning the jubilee year, it is better for him that he should be considered an heir, for the purpose that he should not be compelled to return the inheritance of his wife, and concerning the case of R. Jose b. Hanina (stated above) he is to be considered as a buyer, that he should not suffer any damage; and in the case of Rabbin they have considered him as an heir, to the end that the widow should not suffer any damage. But why did the sages consider him as a buyer in the case of R. Jose b. Hanina? Do not the buyers (from whom he takes away the property) suffer? Therein they themselves cause that they should suffer, as they ought not to have bought goods from a married woman, who lives with her husband, without his consent.

CHAPTER IX.

RULES AND REGULAITONS CONCERNING THE SUPPORT OF UNMARRIED DAUGHTERS AFTER THE DEATH OF THEIR FATHER, IF AMONG THE CHILDREN WERE AN HERMAPHRODITE OR AN ANDROGYN. MAY OR MAY NOT ONE BEQUEATH HIS ESTATE TO STRANGERS IF HE HAS CHILDREN? DOES THE SECOND WILL ABOLISH THE FIRST? IF A SICK PERSON RECOVERS AFTER MAKING A GIFT WHILE SICK, MAY HE RETRACT OR NOT? IF SUDDEN DEATH OCCUR TO MANY PERSONS, AND IT IS NOT KNOWN WHO DIED FIRST, AND EACH OF THE HEIRS CLAIMS FOR HIS BENEFIT.

MISHNA *I.*: If one dies, and leave sons and daughters, if the inheritance is of great worth, then the sons inherit, and the daughters must be supported from it; and if a moderate one, the daughters must be supported, and the sons may go a-begging. Admon, however, said: Because I am a male shall I suffer? Said Rabban Gamaliel: It seems to me that Admon is right.

GEMARA: What is to be considered great worth? Said R. Jehudah in the name of Rabh: It shall be sufficient for all of them to be supported for twelve months. And he (Jehudah) added: When I told the Halakha before Samuel, he said: Such is the decree of R. Gamaliel b. Rabbi. The sages, however, maintain: It shall suffice to support all of them until the daughters become of age. So also it was taught by Rabbin, according to others by Rabba b. b. Hana, when he came from Palestine, in the name of R. Johanan: If the inheritance suffices to support all of them until the daughters become of age, it is considered of great worth; and if less, it is considered moderate. How is this to be understood? If it does not suffice to support all of them, shall the daughters take the entire inheritance, leaving nothing for the sons? Therefore said Rabha: There must be deducted from the inheritance the amount which will suffice for the daughters until they become of age; and the remainder shall be given to the sons.

It is certain that if for some reason the estates become less

in value after the father's death, and do not suffice for the support of the daughters until they become of age, and also for the sons' support, both have already acquired title, and must be satisfied with that which falls to their lot (*i.e.*, the daughters have no right to claim that they shall be supported until of age from the share of their brothers). But how is it if the estate increased in value after death? Shall we assume that the increase belongs to the heirs, and therefore the sons may have the benefit of it? Or, as they had nothing in it when their father died, they are considered entirely cut off from this inheritance, and have nothing to do with the increase? Come and hear what R. Assi said in the name of R. Johanan: If orphans hastened and sold out from this inheritance before the daughters summoned them, the sale is valid, and the daughters have no right to take it away from the buyers, according to the rule that it cannot be collected from encumbered estate for the support of the daughters. (Hence we see the sons are considered heirs, notwithstanding that the estate was not of great worth.) Consequently they have a share in the increase.

R. Jeremiah was sitting before R. Abuhu, and questioned him as follows: If the estates were of great worth, but there was a promissory note in the hands of a creditor, which ought to be collected from the estates, should the estates, because of the note, be considered moderate, so that the support should be for the daughters and the sons should go a-begging? Or, until collected, should all of them be supported, without taking into consideration that after collecting nothing might remain for the support of the daughters? And should you decide that the promissory note, although not yet collected, diminishes the value of the estates, for the reason that the amount due will be collected in any event, even should the creditor die, how is it if the deceased left a step-daughter whom he has to support, according to the marriage contract of his wife, until she shall become of age, and the amount of her support diminishes the estate from being of great worth, and stamps it moderate? How, then, should the inheritance be considered, should the step-daughter die, and then, the obligation being gone, the estates remain of great worth. There is still another question. If the deceased left a widow and a daughter, and the estates left could support only one of them, who

has the preference? And R. Abuhu answered: Go to-day, and come to-morrow. And when he came he said to him: Of all the questions, I can decide the last one. As R. Aba said in the name of R. Assi: The sages have enacted that when there is a widow with a daughter she shall have similar treatment to that of a sister who remains with her brother. As in the latter case, if the estate is moderate she must be supported, although her brothers remain beggars, so also the widow as against a daughter—the widow must be supported and the daughter may go a-begging.

"*Admon, however, said: Because I am a male,*" etc. How is this to be understood? Said Rabha: He means to say: Because I am a male, and ought to inherit all the estates where the inheritance is of great worth, leaving for my sister only the support for her livelihood until of age, shall I remain a beggar when there is a moderate estate?

MISHNA *II.*: If one leave sons, daughters, and an hermaphrodite (if it is doubtful whether male or female), and the inheritance is of great worth, the males may count same among the females; but when the inheritance is moderate, the females may count same among the males.

If one say: "If my pregnant wife should bear a male, he shall take a mana," and she bears a male, the mana is to be given to him; "If a female, she shall take two hundred zuz," she takes two hundred. If a male a mana, and a female two hundred zuz, and she had born a male and a female? The male takes one hundred and the female two hundred zuz. But if she bears an hermaphrodite, he takes nothing. If, however, he said: "What she shall bear shall take," then he takes accordingly. And the same is the case if there were no heirs but he—he inherits all.

GEMARA: The Mishna states: They count same among the daughters, which means he shall be treated like them. But does not the later part state: If she bears an hermaphrodite, he takes nothing? Said Abayi: It means that the males counted him among the females; but the latter have the right not to accept him, and he remains without any support. Rabha, however, maintains: They pass him and he must be similarly supported. And the latter part of our Mishna is in accordance with Rabban Simeon b. Gamaliel of the following Mishna: If

she bears an hermaphrodite or an androgyn, which is at times a male and at times a female, R. Simeon b. Gamaliel said: No sanctity rests upon them. (The cited Mishna treats: If one made a vow for the offspring of a gravid cow—if a male, it shall be a burnt-offering; and if a female, a peace-offering.)

An objection was raised from the following: "An hermaphrodite inherits like a son, and is supported like a daughter." And this can be correct only according to Rabha: That he is considered an heir, like a son, in a moderate inheritance; and is supported, like a daughter, in one of great worth. But according to Abayi, who said above that he takes nothing, how do you find that he shall be supported like a daughter? Even according to your theory, how do you explain Rabha's statement, that as an heir, like a son, he takes something of a moderate inheritance? In such a case the sons take nothing; hence he means to say that he is *considered* an heir like a son—to be a beggar. So also you can explain the Mishna: He is in condition to have support like a daughter, but, nevertheless, he does not get any.

"*If one says: If my pregnant wife shall bear a male,*" etc. Shall we assume that a daughter is better to him than a son (as the Mishna says, "If a male one hundred, and a daughter two hundred")? Concerning inheritance, a male is better to him, as he bears his name; and concerning a gift, a daughter is better to him, as it is more difficult for her to make a living than for a male. Samuel, however, maintains that the Mishna treats of when his wife was pregnant with her first child; and it is in accordance with R. Hisda, who said elsewhere: If the first child is a female, it is a good sign for future sons, according to some because she will educate the sons; and according to some, that she should not be afflicted by a covetous eye. Said R. Hisda: As for me, I always give preference to females over males. And if you wish, it may be said that our Mishna is in accordance with R. Jehudah in the following Boraitha: It is a meritorious act for one to support his daughters, and so much the more his sons who occupy themselves with the Torah. So is the decree of R. Meir. R. Jehudah, however, said: It is a meritorious act to support the sons, and so much the more to support the daughters, because of their humiliation (if they should have to beg).

There was one who said to his wife: I bequeath my estate to the child with which you are pregnant. Said R. Huna: This means that he designed to give title to an embryo, and an embryo cannot acquire title. R. Na'hman objected to R. Huna from our Mishna, which states: If my wife shall bear a male, he shall take a mana, etc. And he answered him: I do not know who has taught our Mishna (*i.e.*, I do not find our Mishna to be in accordance with the majority, nor a single one of the sages). But let R. Na'hman say that the Mishna treats of when the bequeather said: I bequeath the estate to the child after my wife has borne it? R. Huna is in accordance with his principle that the child does not acquire title even after birth. (As it was taught:) R. Na'hman said: If one bequeaths to an embryo, title is not given; but if he said, "after he is born," title is given. R. Huna, however, maintains that even then title is not given. But R. Shesheth is of the opinion that in either case title *is* given. And he added: I deduce my statement from the following Boraitha: "If a proselyte supposed to be childless dies, and Israelites have robbed his estate, and thereafter they hear that he has a son, or that his wife is pregnant, they are obliged to return it. If, however, they have returned it, and thereafter they hear that the son is dead, or that his wife has had a miscarriage, and they again take the estate, he who made a hazakah in the second instance has acquired title, but he who made the same in the first instance has not." Now, if it be remembered that an embryo does not acquire title, why should title not be given to them who made a hazakah in the first instance? Said Abayi: There is a difference with an inheritance which came of itself: In such a case the embryo acquires title. Rabha, however, said: Even in case an inheritance came by itself, the embryo does not acquire title; and the reason why title is not given to them who made a hazakah in the first instance is because they were still uncertain whether the property taken would remain with them, as there was still a doubt whether children were left. But in the second instance they were sure of their ground.

Come and hear another objection: "A child of one day inherits and bequeaths (*e.g.*, if his father dies when he was even one day old, he inherits from his father; and if at birth the estate of his deceased father came to him, and he dies when he was

one day old, his relatives inherit from him). We see, then—only when he was one day old, but not when in embryo. This was explained by Rabh Shesheth: He inherits the estate of his mother, to bequeath to his brothers on his father's side. And this can be only when he was alive one day after his mother; but not when he was in embryo, as he died before his mother. And a son does not inherit from his mother, when once in his grave, so that his brothers on his father's side could inherit from him.

Shall we assume that in case the mother dies while pregnant the embryo dies first? Perhaps she dies first? There happened such a case, and the embryo moved convulsively thrice. Said Mar b. R. Ashi: Such a movement was without any life, such as the movement of the tail of a lizard. Mar b. R. Joseph in the name of Rabha said: The cited Boraitha means to say that a child of one day diminishes the share of a first-born. *E.g.*, a first-born takes a double share—*i.e.*, twice as much as each of his other brothers. But if there were added a male child of one day, the estate must be divided into five parts, if there are four brothers, of which the first-born takes a double share. And if this child dies afterwards, his share is to be divided equally among the four brothers. This is only when he was old one day, but not when an embryo; because [it is written, Deut. xxi. 15], "and they *bear* him children." As the same said also on the same authority: A son who was born after the death of his father does not diminish the share of the first-born, as it reads in the verse just cited "bear *him*"; but when born after his death, it was not born to him.

All that was said here was taught in the city of Sura. In Pumbeditha, however, it was taught as follows: Mar b. R. Joseph said in the name of Rabha: A first-born who was born after the death of his father does not take a double share. As it is written [ibid., 17]: "Shall he acknowledge," and when he is dead he cannot acknowledge. The Halakha prevails in accordance with all the versions said by Mar b. R. Joseph in the name of Rabha.

R. Itz'hak in the name of R. Johanan said: He who bequeaths to an embryo, title is not acquired. And should you object to this statement from our Mishna, which states: "If one bequeaths a mana to the embryo, he takes it after he is born,"

I may tell you that this is said only of a father, whose mind is near to his son; but it cannot be done by a stranger. Said Samuel to R. Hana of Bagdad: You may bring to me ten persons, and I will teach in their presence that title is given if one bequeaths to an embryo. The Halakha, however, prevails that title is not given.

There was one who said to his wife: I bequeath my estate to the children who shall be born of you by me. And his elder son came and said: What becomes of me? And the father answered: You will take a share as one of the brothers. Now, the children which are to be born can certainly not acquire any title; but the question is, does the elder son, when he came to share with his brothers born thereafter, take a double share, as his father bequeathed to him a part of his estate when his brothers were not yet in existence? Or does he share with them equally? According to R. Abbin, R. Miicha, and R. Jeremiah, he *is* entitled to a double share; and according to R. Abuhu, Hanina b. Papi, and R. Itz'hak of Naf'ha, he is not. Said R. Abuhu to R. Jeremiah: With whom should the Halakha prevail—with us or with you? And he answered: Certainly with us, as we are older than you; and not with you, who are still young scholars. And R. Abuhu rejoined: Does this depend upon age? It depends upon reason, and our reason is better than yours. And what is it? questioned R. Jeremiah again. And he answered: Go to R. Abbin, and ask him, as I have already explained to him the reason at the college; and he shook his head in sign of assent. He went to him, and he told him: Because this case is similar to that of one who says: "You and this ass shall acquire title to this article," would title be given to him? Is this not to explain: You shall acquire title as the ass? The same is the case if one says: You shall share with the children, which are not yet in existence even in pregnancy. Hence title is not acquired in either case. It was taught: If one says: "Acquire title to this as the ass," certainly title is not given; but if he says: "Acquire title, you and the ass," according to R. Na'hman title is given to a half. And R. Huna said: This man said nothing. R. Shesheth, however, said: He has acquired title to the whole of it. Said R. Mordecai to R. Ashi: R. Ivia raised an objection from a Mishna in Tract Kiduchin: It happened with

five women, among them two sisters, that one presented to them a basket with dry figs, saying: You are all betrothed to me with this basket. And one of the women accepted the basket for them all. And when the case came before the sages, they said: The sisters are not betrothed. Hence—only the sisters? But the strangers were. Why? Is this not similar to the case: You and the ass shall acquire (*i.e.*, as the sisters could not under any circumstances be betrothed to one person, the other women must also be treated similarly)? And he answered: That is what R. Huna dreamt—that R. Ivia was going to raise a question (and now I see that R. Huna's dream was true). However, the objection does not hold good, as that Boraitha was explained: In case the man has added: All of you who are fit to be my wives.

There was one who said to his wife: My estate shall be for you and your children. And R. Joseph decided: One half of the estate belongs to her, and the other half to her children. And he added: I deduce my decision from the following Boraitha: Rabbi said: It is writen [Lev. xxiv. 9]: "And it shall belong to Aaron and to his sons," meaning a half shall be for Aaron and a half for his sons. Said Abayi to him: What comparison is this? Aaron was fit to receive a share; and therefore the Merciful One mentioned him, that he should take a half. But in this case a woman is not fit to be an heir at all, when there are male children. Would it not be sufficient that she should take an equal share with her children? Is that so? Did not such a case happen in Nahardea, and Samuel collected for the woman a half; and also in Tiberias, and Johanan collected for her a half? Furthermore, when R. Itz'hak b. Joseph came from Palestine, he told: It happened that the government had taxed the citizens of the city and those who had real estate for the manufacture of a crown for the ruler, and Rabbi decided a half should be collected from the citizens, and the other from the owners of real estate. But what comparison is that with what was told by R. Itz'hak? As to that one, it is known that in previous orders from the government they applied only to the rich citizens, and those who possessed real estate only assisted them, with the consent of the government. But the order in question was written: Both the rich, and real-estate owners are taxed. Therefore Rabbi's decision.

R. Zera objected from the following: If one said: I intend to bring a meal-offering, of one hundred tenths of an ephah —to bring it in two vessels—he may bring sixty in one vessel and forty in the other. However, if he brought fifty and fifty, in two vessels, he has fulfilled his duty. We see, then, that only when he does so it is valid; but the law prescribes that he must bring sixty in one and forty in the other. Hence we see that equal halves is not to be understood when he says in two parts? Nay, this cannot be compared. We are witnesses that he intended to bring a great offering; and the expression "in two vessels" was because he was aware that it could not be put into one. Therefore there must be put in one vessel as much as it can contain, and the remainder in the other one.

(Says the Gemara:) The Halakha prevails in accordance with R. Joseph in the three cases: the case of a field, mentioned in the eighth chapter (p. 254), in the case of a sudarium mentioned in the preeeding chapter (p. 253), and in this case of the half. There was one who had sent home pieces of silk, without any order to which member of his household they belonged, and R. Ami decided: Those which are fit for the sons, they shall use; and those which are fit for the daughters, shall be used by them. This law, however, holds good only in case he had no daughters-in-law; but if such a case should happen when there are daughters-in-law, and his own daughters are married, it is to be supposed that he sent them to the daughters-in-law. If, however, his own daughters were unmarried, he would not neglect his daughters, and it is to be supposed that he sent them for them.

There was one who said in his will: My *sons* shall inherit my estate. However, he had only one son, and some daughters. And the question arose: By the expression "sons" in the plural, does he mean the one son only, excluding the daughters, or does he mean to include them? Said Rabha: There is a verse in Num. xxvi. 8, "And the *sons* of Pallu: Eliab." And R. Joseph said: There is another verse in I Chron. ii. 8, "And the *sons* of Ethan: Azaryah." There was another, who said: "My estate shall belong to my sons," and he had only one son and a grandson. And the question arose: Whether people are used to call grandsons also sons? R. Hbiba said:

They are. And Mar b. Ashi maintains: They are not. And there is a Boraitha in accordance with the latter, namely: If one vowed not to derive any benefit from his sons, he may derive it from the grandsons.

MISHNA *III.*: If one left grown-up and minor sons, and the former improved the estate, the improvement shall be divided equally. If, however, they said: "Observe in what condition the estate was left by our father, and it shall be known that we are going to improve it for our own sake," they have a right to take the benefit for themselves. The same is the case with a widow. If she had improved it without any remark, the improvement belongs to all the heirs. But if she remarked, "Seeing in what condition my husband left," etc., the benefit belongs to her.

GEMARA: Said R. Hbiba, son of R. Joseph b. Rabha in the name of his grandfather: The Mishna means to say that they have improved the estate, not at their own expense, but at that of the estate (*i.e.*, they went only to the trouble of hiring laborers for improving, but at the expense of the estate). But if they had expended from their own, then the benefit belongs to them without any remarks. Is that so? Did not R. Hanina say: If their father left them only covered wells (which are usually higher for watering fields), the improvement is for all? We see, then, that although the wells required much trouble to preserve them from pollution, and they should be always covered, the improvement is nevertheless for all? This case is different. It requires only that they shall be watched; and this can be done by minors also.

"*Observe in what condition,*" etc. R. Saphra's father left money, and R. Saphra took it for business purposes. His brothers summoned him before Rabha (demanding a share from the profits). Said Rabha to them: R. Saphra is a great man, and would not leave his study to trouble himself for the sake of others.

"*If she had improved it,*" etc. But what has a woman to do with the estate of orphans? (The law dictates as to whether she shall take what belongs to her according to her marriage contract, and depart; or shall take upon herself the trouble of the orphans, and be supported from the estate. But she has no right to any profit.) Said R. Jeremiah: It treats in case

the woman were an heir (*i.e.*, if the will reads: She shall share equally with the orphans).* But if so, it is self-evident. Lest one say: As it is not usual for a woman to occupy herself with business, therefore it should be considered as she remarked—she is doing it for herself, it comes to teach us that it is not so.

"*In what condition my husband left it*," etc. Is this not self-evident? Lest one say: Because of the pleasure she takes in thinking that people praise her for troubling herself for the orphans' sake, she relinquishes the benefit in spite of her previous remark, it comes to teach us that it is not so.

R. Hanina said: If one has made the wedding of his son in one of his houses, the son acquires title to the house: provided the son was of age, married a virgin, and she was his first wife, and this wedding was the first of his house. It is certain that when the father has separated for this wedding a house with an attic, the son acquires title to the house, but not to the attic. But how is it if on the house was a balcony? or there were two houses, one inside of the other? Is title given to both, or only to that in which the wedding took place? These questions remain undecided. An objection was raised: If the father had separated for his son a house and furniture, the son acquires title to the furniture, but not to the house? This Boraitha treats of when the treasurer of his father was still in the house. So said R. Jeremiah. And the Nahardean said: Even when there was left his pigeon-coop. And both R. Jehudah and R. Papi said: It suffices if his father left there a vessel with roasted fish (*i.e.*, this shows that he has not relinquished his right to the house). Mar Zutra left his sandals in the wedding house which he separated for his son, and R. Ashi a bottle of oil (for the purpose said above). Said Mar Zutra: The following three things the rabbis enacted as laws,† without giving any reason: The case just mentioned; and that which was said above in the name of Samuel: If one has be-

* The commentators Rashbam, Tosphath, and Bach discuss at length how the widow is an heir also, illustrating, *e.g.*, if one has married the daughter of his brother, who has no other children besides her, and the brother has inherited the estate of their father, and thereafter both brothers die, then the widow of the one brother is also an heir to the estate of her grandfather, which belonged to her father, who had no heirs except her. There are also some other illustrations, but all are complicated. We give the last, which is simple.

† Gershom explains *Sinaic* laws, with which Rashbam does not agree.

queathed all his estates to his wife, she is considered a guardian only; and also that which was said by Rabh. If A said to B: You owe me a mana, give it to C, and all the three were present, title is given to C.

MISHNA *IV.*: Brothers partners in business. If one of them was taken by the government to work for it, the damage caused by his absence, and also the profit for the business during that time, must be counted to the partnership. If, however, he becomes sick, and has to be cured, it is at his own expense.

GEMARA: The rabbis taught: If the government had appointed one of the brothers as a collector, or a military purveyor, if this was because of the duty of the house, it must be counted for all of them, but if it was because of his personal fitness, then it is for himself. Is this not self-evident, because the duty of the house must be counted for all? It treats of when he was a genius. Lest one say: In such a case it must not be counted for the house, because he was taken on account of his genius, it comes to teach us that it is not so.

The rabbis taught: If one of the brothers took two hundred zuz, to begin the study of the Torah, or to learn a trade, they may say to him: If you are with us, you have to be supported; but not otherwise. But why not support him, by deducting what his labor was worth to the house? This may be a support to R. Huna's statement, who said elsewhere: The blessing of the house increases when there are more people (*i.e.*, because the expenses of the house do not decrease when there is one person less). But, after all, let them support him even in his absence for the profits, owing to his share after deducting his labor and the expenses. Yea, this in reality they have to do.

"*If, however, he becomes sick*," etc. Rabbin sent a message in the name of R. Ilah: The Mishna means to say: In case he himself causes his sickness; but if he was occasionally sick, the cure must be at the expense of the house. What does it mean: "Caused by himself"? As R. Hanina says: All sickness comes from Providence, except cold. As it is written [Prov. xxii. 5]: "Thorns * and snares are in the way of the perverse man; he that doth guard his soul will keep far from them."

* The term in Hebrew is "zinim," and "zinha" means cold; and so it is taken by the Talmud. The basis of Leeser's translation is unknown.

MISHNA *V.*: If, while the father of the house was still alive, he sent through some of the brothers presents to weddings of his friends, and after his death some of the brothers married and the presents were returned to them by the same friends, it is to be counted to the income of the house; as the wedding presents may be replevined by the court. If, however, one presents to his friends pitchers of wine or oil, it is not to be replevined by the court, as this is reckoned a bestowing of favors only.

GEMARA: There is a contradiction from the following: "If the father sent, through one of his sons, a present to the wedding of his friend, and told him to remain there during the wedding, then, when this present returns to the son's wedding, it belongs to him only. If, however, a wedding present was sent to the father, the returning must be at the expense of the house." Hence we see that the son may preserve the returning present for himself; and this contradicts our Mishna. Said R. Assi in the name of R. Johanan: Our Mishna also treats: When the wedding present was first sent to the father. But does not the Mishna state: Through some of the brothers? Read *to* some of the brothers. But the Mishna states farther on: If it was returned? It means: If this came to be returned by the brothers, it must be returned at the expense of the house. R. Assi himself, however, said: It presents no difficulty (there is no necessity for such a complicated explanation of the Mishna, as it can be explained thus). Our Mishna treats: When the father sent the present through one of his sons, without designating that the returns should belong to him, then the returns belong to the house. And the Boraitha treats: When the father has nominated one of his sons to deliver the present, so that the returning should belong to him. Samuel, however, said: The law is to be practised in accordance with the Boraitha. And our Mishna treats: In case the son through whom the present was sent dies childless, and his brother came to marry his wife, who according to the law is also his heir. However, this present he does not inherit from him; because there is a rule that this brother does not inherit property which was not yet in the deceased's possession, but has to come to him in the future. (Says the Gemara:) From Samuel's statement is to be inferred that the one who has re-

ceived the present is obliged to return, even if the donator were dead. Why, then, let him say: Give me my friend who presented it to me, and I shall enjoy myself and give him a present, as he did to me. But as this cannot be, I am not obliged to anything. As we have learned in the following Boraitha: At those places where it is customary to return the presents which the bride has given to her groom at the time of betrothal, and she dies before marriage, they must be returned. At the place where it is not customary, they must not. And R. Joseph b. Abba in the name of Mar Uqba, quoting Samuel, said: Even at those places where it is customary to return, it is only in case the bride dies; but when the groom, it must not be returned, for the reason that she may say: Give me my husband, and I will enjoy myself with him, as for that purpose he gave them to me. Hence he may say also: Give me my friend, and I will enjoy with him. Said R. Joseph: It speaks of when his friend was at the wedding and had enjoyed himself with him all the seven days of the wedding, and the groom suddenly dies before the present was returned to him.

Shall we assume that in the above-mentioned claim of the bride, "Give me my husband," etc., the Tanaim of the following Boraitha differ: If one has betrothed a woman, and dies before marriage (and the marriage contract was already written), a virgin collects two hundred and a widow one hundred zuz. Concerning the presents given at the betrothal, however, it is to be practised as is customary at that place. So is the decree of R. Nathan. R. Jehudah the Prince, however, said: In reality, it was decided that in the place where it is customary to return, it must be returned; and where it is not customary it must not. Now does not R. Jehudah repeat what was said by the first Tana? It must then be assumed that the point of the difference is: If the bride may claim: "Give me my husband," etc., and the Boraitha is not complete and should read thus: If one betroths a woman, a virgin collects two hundred and a widow one hundred zuz, provided he has withdrawn from the contract. But if she dies, if it was in a place where it was customary to return, it must be done so; and if where it was not, it must not. But all this is in case she dies. But if he dies, there is to be no return, as she may claim: Give me my husband, etc. And to this R. Jehudah the Prince came to say:

Even in the latter case it must be done according to the custom of that place, as such a claim is not to be considered? Nay! All agree that the claim in question is to be considered; and there is no difference between them in case he dies. But in case she dies, they differ. And the point of their difference is: Whether the presents with which she was betrothed should be considered lost forever. According to R. Nathan, they are not so considered; and according to R. Jehudah, they are. But does not the Boraitha state that where it is customary to return, it must be so done? This means presents which were given by him aside from the betrothal. And the Tanaim of this Boraitha are in accordance with the Tanaim of the following: If one has betrothed his bride with a talent (a coin—according to some one hundred and twenty manas, and to others sixty, and according to Rashbam twenty-five), a virgin collects two hundred zuz besides the talent, and a widow one hundred. So is the decree of R. Meir. R. Jehudah, however, maintains: A virgin two hundred, and a widow one hundred of the talent; and the remainder must be returned. But R. Jose said: If he has betrothed her with twenty, he may give her thirty halves; and if with thirty, he may give her twenty halves. Let us see of what kind of case this Boraitha speaks. In case *she* dies, there is no longer any marriage contract; and if he dies, why should she return the remainder? Is it not said above that all agree that the betrothal money must not be returned, as the claim: "Give me my husband," etc., is to be considered? And if you should say: It speaks in case she had sinned; then if intentionally, has she still a right to her marriage contract? And if unintentionally, he may marry her if he be a commoner. It must be then said that it speaks of when the groom was a priest, and she was *forced* to sin (and in such a case a commoner may, and a priest may not marry her). And the point of their difference is, that R. Meir holds the money of betrothal to be lost forever, and R. Jehudah holds that it is not; and to R. Jose it was doubtful whether yes or no. And therefore he maintains that, according to the rule, doubtful money is to be divided. If he has betrothed her with twenty selas (eighty zuz), she has to return to him forty zuz. However, he has to complete the amount belonging to a widow as a marriage contract, which is one hundred zuz; therefore he gives her thirty half-selas, which

are sixty zuz, and this completes the mana to which she is entitled. And if he betrothed her with thirty selas, she has to return to him fifteen, and he must give her twenty half-selas more. Said R. Joseph b. Minumi in the name of R. Na'hman: Babylon is the place where it is customary to return. And by Babylon he meant the city of Nahardea. But how is it with the other cities in Babylon? Both Rabba and R. Joseph say: The betrothal money is not to be returned; but the presents are. Said R. Papa: The Halakha prevails, whether he or she dies, or he has retracted, the presents only are to be returned, but not the betrothal money. And in case *she* has retracted, the betrothal money also. Amimar, however, maintains that even in the latter case the money must not be returned, for the reason that one may say that he is then allowed to be betrothed to her sister (*i.e.*, if one should see the betrothal money returned, he might think the betrothal cancelled, and he might marry her sister, which is biblically prohibited so long as she is alive). But according to R. Ashi: This is not to be feared, as the divorce in her hands testifies that the betrothal was not cancelled. (Said the Gemara:) R. Ashi's statement is not to be taken into consideration at all; as one may be aware that she has returned the betrothal money, and not be aware that she took a divorce.

"*May be replevined*," etc. The rabbis taught: The following five things were said about wedding presents: (a) They may be collected by the court; (b) they are returned at the time when the donator marries; (c) they are not considered usurious (*i.e.*, if the return was of a greater value than presented); (d) the Sabbatic year does not release them; (e) a first-born has no double share in them. They are collected by the court, because they are considered a loan. They are not usurious, because they were not presented with this intention. The Sabbatic year does not release them, because the verse Deut. xv. 2 does not apply to them. And the first-born does not take a double share in them, because they are not as yet in existence, and he is not entitled to that which will be an inheritance in the future.

R. Kahana said: The following is the rule: If one came into the city, and heard that his comrade, who was at his wedding, marries, he must come and make a present. The same is the

case if he heard the voice of the drum which announced the marriage of his comrade; but if it was not drummed, the groom ought to let him know. However, if he failed to do so, although he may be away, he nevertheless must pay. In such a case, however, he may deduct for the meal of which he has not partaken. And how much may he deduct? Said Abayi: The inhabitants of the city of Ganna used to deduct one zuz. However, this depends upon the value at which one would appraise the respect and honor of attendance at the wedding banquet. The rabbis taught: If one has married publicly, and thereafter, by returning the presents, he wishes to be married privately, he has a right to say: As you did with me publicly, I will do with you; but not when privately. The same is the case if one has married a virgin, and the other marries a widow; or, if one has married a second wife, and his comrade marries his first wife, the former may say: As you have done with me, I will do with you. The same is the case if to him it was done once, and his comrade demands from him he shall do twice.

The rabbis taught: Who is like unto a wealthy man who is known to be rich by his many cattle and estates? The one who is a master in Haggadah (as he lectures everywhere, and becomes known to all). Who is like unto a broker who does business at his home only and is not well known to the community? The one who occupies himself with pilpulistic (dialectology, one who is a master in dialectics). Who is like unto one who makes his living by selling things which are to be measured—who gathers his money little by little, which finally becomes a considerable amount? The one who gathers the decisions of the rabbis, little by little, and finally possesses a great deal of wisdom. However, all are dependent to the owner of wheat, which is the Gemara, as only by the studying of it are we able to understand the Mishnayoth and the Boraithas.

R. Zera in the name of Rabh said: It is written [Prov. xv. 15]: "All the days of the afflicted are evil." It means: The masters of Gemara (because they must find out how to decide the laws from the Mishnayoth, which always need an explanation). "But he that is of a cheerful heart," etc., means: the one who is a master in Mishnayoth. Rabba, however, maintains the reverse. He who is a master in Mishnayoth cannot come to any conclusion about Halakha; but he who is a master in

Gemara knows how to decide Halakhas. And this is what R. Mesharshia said in his name: It is written [Eccl. x. 9]: "He that moves stones will be hurt through them," meaning the masters of the Mishna. "He that cleaveth wood will be endangered thereby," means the masters of Gemara (because they do not always succeed in finding out the correct decisions). R. Hanina said: "All the days of the afflicted," etc., means him who has a bad wife. "But he who is of a cheerful heart," etc., means him who has a good wife. R. Janai said: "All the days of the afflicted," etc., means one who is effeminate. "And he that is of a cheerful heart," etc., means him who is hardened to the ways of the world. R. Johanan said: By the first is meant him whose nature is merciful, and who takes to heart everything which happens to his fellow-men; and by the second is meant him who is callous. R. Jehoshua b. Levi said: The first means him who is a pedant; and the second, him whose mind is worldly.*

MISHNA *VI.*: If one sends presents to the house of his betrothed's father, to the value of one hundred manas, and has partaken of the betrothal meal, even for one dinar, they are not to be returned. If, however, he did not partake, they may be returned in case of retraction. If the presents were given for the purpose that the bride should bring them, after her marriage, to her husband's house, they are to be returned. But if such is to be used while she is yet in her father's house, they are not.

GEMARA: Said Rabha: It means if he has partaken of no less than the value of a dinar; but if less, he has a right to demand a return. Is this not self-evident? The Mishna states a dinar? Lest one say this statement is only general, but not particular, he came to say that this is to be taken literally. Here in the Mishna it is eating. But how is it if he drank, or his substitute had partaken? Also, how is it if they had sent *to him?* Come and hear. R. Jehudah in the name of Samuel said: It happened with one who had sent to his betrothed's father one hundred *carrums* containing pitchers of wine and oil, and vessels of silver and gold, and silk garments; and while he was joyful over the act, he rode on his horse to the gate of

* The second explanation to this verse by the same authority will be in Chapter XI. of Tract Sanhedrin as the proper place.

his betrothed's father, where they gave him a goblet of a warm beverage which he drank while sitting on the horse. Thereafter he died before marriage. And R. Aha, the mayor of that city, brought this case up before the sages in the college of Usha, and they decided: Such presents as may become spoiled before marriage are not to be returned, but such as are in good condition may. Hence we see even if one has not eaten, but drunk, it is the same. Infer from this also that the value of what he had drunk was less than a dinar (as a goblet of warm beverage cannot amount to a dinar). Said R. Ashi: Who can assure us that the goblet to which they treated him was not worth a thousand zuz, as perhaps they had ground a pearl * of that value in the goblet? But infer from this that if they had sent to his house, it is the same as if he had partaken of it at the house of his betrothed's father? Nay! Perhaps at the gate of his betrothed's father is the same as if he had partaken of it *inside* the house. The schoolmen questioned: How is it when the presents have improved—*e.g.*, if he had made presents in cattle and they brought offspring? Shall we say, because they have to be returned to him, they are to be considered under his control, and belong to him; or, because if they should be lost, payment for them would be demanded, they are considered under the control of his betrothed's father? This question remains undecided.

Rabha questioned: The presents which are usually spoiled during the time from the betrothal to marriage—how is it if they were in good condition; must they be returned, or not? Come and hear the Boraitha cited above: "R. Aha, the mayor of that city, brought the matter up before the sages of Usha, who decided: If they are liable to be spoiled, they are not to be returned." Does it not mean although they are in good condition? Nay, it may mean if they *were* spoiled. Come, then, and hear the last part of our Mishna: "But if they be used while she is yet in her father's house they are not?" This was explained by Rabha to be nets and veils. R. Jehudah in the name of Rabh said: It happened with one who sent to the house of his betrothed's father, wine, oil, and garments of flax; all of them new of that year at the time of Pentecost.

* In ancient times they used to grind pearls and diamonds in medicine.

But what news came he to tell us? If you wish, he tells us the great value of the land of Israel; and if you wish, it may be said that he came to teach us: If one claims that he had done so at such a time, his claim is to be considered. The same said again in the name of the same authority: It happened with one, that he was told that his betrothed wife could not smell. He went after her into a ruined building to test her, and said: I perceive a smell of radishes (*i.e.*, he kept in his pockets some for the purpose of testing her, whether she would smell them), and she answered him sarcastically: If one should furnish me with the dates of Jericho, I would eat them with the radishes I smell. Thereupon the ruined building fell and she died. And the sages decided: Because her husband entered the ruin only for the purpose of testing, he has no right to inherit from her.

"*But if they be used while in her father's house,*" etc. Rabbin the elder was sitting before R. Papa and said: This is only in case death occurred to one of them; but if *he* had retracted, the presents are to be returned, but not what he had expended for the banquets. If, however, *she* had retracted, even the value of a bundle of herbs is to be returned. Said R. Huna b. R. Jehoshua: The value of the meat used at the banquets must be appraised at the cheapest price. How cheap should it be? A third of the existing price.

MISHNA *VII.*: If a sick person had bequeathed all his estates to strangers, leaving some ground for himself, his gift is considered valid. If, however, he left nothing, it is invalid.

GEMARA: Who is the Tana who holds that we may act in accordance with the supposed intention of the bequeather (as the Mishna states, "If he left nothing for himself it is invalid," which means, if the sick person becomes cured, he may retract: because if he could know that he would remain alive, he would not do so)? Said R. Na'hman: It is according to Simeon b. Menasia of the previous chapter (p. 291). R. Shesheth, however, maintains: This is in accordance with R. Simeon of Shizuri of Tract Gittin (Chapter VI., Mishna 6), who said: Also who is dangerously sick. Who is the Tana of what the rabbis taught in the following Tosephtha: If one was sick in bed, and he was questioned to whom he bequeathed his estates, and he said: "I thought that I had a son, but now that I am

convinced I have not, I bequeath my estates to so and so"; or, "I thought that my wife was pregnant, but now that I know she is not, I bequeath them to so and so"; and thereafter it became known that he left a son, or that his wife was pregnant, this bequeathing counts nothing—shall we assume that it is in accordance with R. Simeon b. Menasia and not with the rabbis? Nay! It may be even in accordance with the rabbis, as when he said: "I thought," etc., it is different. Why was it supposed previously that this should not be in accordance with the rabbis? Lest one say that the sick person said it only to mention his sorrow, but he did not think that it should not be bequeathed if he did have a son, it comes to teach us that it is not so. R. Zera in the name of Rabh said: Whence do we deduce that a gift of a sick person must be *biblically* considered? Because it is written [Num. xxvii. 8]: "Then shall he cause to pass unto his daughter" (*i.e.*, it should be written as elsewhere: You shall give the estates), it comes to teach that there is another case which we have to pass, and this is the gift of a sick person. R. Na'hman in the name of Rabba b. Abuhu, however, maintains from [ibid., verse 9]: "Shall ye give his inheritance unto his brothers" (which is also superfluous, as it should read: If no daughter, then to the brothers), which teaches that there is another gift which is to be considered valid, and that is, of a sick person. R. Menasia b. Jeremiah said: It is deduced from [II Kings, xx. 1]: "Give thy charge to thy house," etc., from which we see that concerning a sick person it is sufficient when he charges without any writing. And Rami b. Ezekiel said: From the following [II Samuel, xvii. 23]: "And Achithophel . . . and gave his charge to his household," etc., we see that charging is sufficient without any writing.

The rabbis taught: The following three things has Achithophel charged his sons: You shall not quarrel with each other; you shall not rebel against the kingdom of David; and if the Day of Pentecost be a clear one, you may begin to sow wheat. Mar Zutra, however, said: It was taught that he said: If it should be cloudy. Nahardeans said in the name of R. Jacob: Not exactly clear, and not exactly cloudy; as, if it should be a little cloudy, with a north wind blowing, it is also considered clear. Said R. Abba to R. Ashi: We, however, do not rely

upon the cited Boraitha, but on what is said by R. Itz'hak b. Abdimi in Tract Yoma (p. 29, lines 14, 15, etc.).

[There is a Boraitha by Abba Shaul: If the Day of Pentecost be clear, it is a good sign for the whole year. R. Zebid said: If the first day of the new year is a warm one, the whole year will be warm; and if cold, the whole year will be so. And to what purpose was it said? Concerning the prayer of the high priest on the Day of Atonement (that he should pray accordingly).] Rabha, however, in the name of R. Na'hman said: The gift of a sick person is rabbinical. And it was so enacted that a sick person should not become exhausted, being aware that, because he is sick and cannot write down or sign his will, he can do nothing with his property. But did, indeed, R. Na'hman say so? Did he not say: Although Samuel decided: If one sold a promissory note to his neighbor, and thereafter relinquished his right in it, his act is valid; and even his heir may do so? He (Samuel) nevertheless admits that if he gave this note to some one as a gift, he has no longer right to relinquish his debt, even if he becomes cured. Now, this would be correct if the gift of a sick person were biblical; but if it is rabbinical, why should he not be able to relinquish it when cured? It is true it is not biblical, but the rabbis have enacted that this law should be equal to a biblical one.

Rabha in the name of R. Na'hman said: If a sick person said: "A shall reside in such a house," or, "B shall consume the products of such and such a tree," he said nothing, unless he said: "Give such and such a house to A, that he may reside there"; "Give such and such a tree to B, and he shall consume its products." Is it meant to say that R. Na'hman holds that a sick person who verbally wills has no more right than one who is in good health—*i.e.*, if one who is in good health should say: "He shall reside there," it would not be considered a gift even if it were done with the ceremony of a sudarium; then it would contradict another saying of Rabha's in the name of R. Na'hman: If a sick person said: "The loan made by me to A shall be given to B," he is to be listened to, which is not the case with one in good health, as title cannot be given to a loan which is made with the intention that the borrower shall expend it. (Hence we see that a sick person has more right than one in good health.) Said R. Papa: The reason of this law is,

because an heir inherits it, it is considered as if it were under the control of the borrower. And farther on it is said that the gift of a sick person is considered as an inheritance. R. Aha b. R. Aiqua, however, said: To transfer a loan is lawful, even for him who is in good health in case it were made in the presence of all three, as is said above by R. Huna.

The schoolmen propounded a question: If the sick person bequeaths a tree to A and the products of it to B, should it be considered as if he reserved it for himself, in such a case it being said above that he cannot retract when cured, or is it not so considered? And should you decide that it is not so considered when he bequeaths the products to another, how is it if he said: I bequeath the tree to A, except the products. Is this considered as if he reserved some of the ground for himself, or not? Said Rabha in the name of R. Na'hman: Even if it should be decided, the products to another, it cannot be counted that he reserved some of the ground for himself, it is to be counted as if he left the products to himself, for the reason that if one left to himself, he does it with a good eye. Said R. Abba to R. Ashi: We taught R. Na'hman's statement as to what was said above (p. 153) by Resh Lakish concerning a house and an attic; and in accordance with R. Zebid's explanation there.

R. Joseph b. Minumi in the name of R. Na'hman said: A sick person who has bequeathed all of his estates to strangers, it must be investigated how was the case (*i.e.*, if he had divided them at one time). *E.g.*, of my property such and such shall belong to A, and such and such to B, etc.—as he could not do otherwise if he had made up his mind to divide his estates in such a manner as if he were to die of his sickness, so the last ones are not considered as if he would reserve some of his estates for himself—all of them acquire title after his death. But in case of cure he may retract from all of them, even from the first, but if he so does after deliberating (*i.e.*, "Such and such shall be to A," then stops, and some time thereafter adds: "Such and such to B," etc.), in case he was cured of this sickness he may retract only from the last one, as he left nothing for himself—for it is to be supposed that if he knew he would be cured he would not give away the last of his estate so that he should remain a beggar—but not from the previous one.

But why should not we suppose, even in the latter case, that his intention was concerning all of them, in case he should die, and the deliberation was as to who was more worthy to be his inheritor? Usually a sick person who expects to die makes up his mind for all his estates before he mentions any name.

R. Aha b. Minumi in the name of R. Na'hman said: If a sick person has bequeathed all his estates to strangers, and thereafter is cured, he cannot retract, as it may be feared, perhaps, he has estates in another country. But does not our Mishna state: In case he left nothing for himself, he may? And according to this theory, how can such a case occur? Said R. Hama: It may occur, if he said: *All* my estates, wherever they may be found. Mar b. R. Ashi said: Our Mishna means to say: In case it was clear to the people that he had no estates elsewhere.

The schoolmen propounded a question: Should a retraction in part be considered a retraction of all, or not (*e.g.*, if he first bequeaths all his estates to A, and thereafter he bequeaths a part of same to B, which, according to the law, he may do, the question arises whether A has still the right to what was bequeathed to him at first, or the retraction of a part annuls the first entirely)? Come and hear: "If one bequeaths all his estates to A, and thereafter a part of them to B, B acquires title, but A does not." Is it not to be assumed that it means in case he dies? Nay! It means in case he was cured. And so it seems to be from the latter part stated in the same Boraitha: "If he wrote, 'A part of my estate shall belong to A and all the remainder to B,' the latter acquires title, but not the first." And this statement is correct in case he was cured; as then, bequeathing all the remainder to B, he reserved nothing for himself; but if it speaks in case he dies, why should both of them not acquire title? Said R. Yemar to R. Ashi: The same might be said even when he was cured. If you decide that a retraction in part is considered a retraction to all, it is correct that title is given to B, as the first bequeathing to A is entirely annulled with that which he has separated from it to B. But if you should decide that a retraction in part does not annul the first, let this case be considered as the case of "dividing" mentioned above, and title should not be given to any of them.

The Halakha, however, prevails: "That a retraction in part

is considered entirely." And the first case mentioned in the just cited Boraitha holds good for both, whether he dies or is cured; and the latter case holds good only when he was cured.

R. Shesheth said: The expressions, " He shall take," " shall be rewarded," " shall make a hazakah," and " shall acquire title " are to be considered a *gift*, from which he has no right to retract. A Boraitha adds: " Also the expression ' shall inherit,' to him who is fit to be his direct heir." And it is in accordance with Johanan b. Beroka.

The schoolmen questioned: How shall it be done, if he expresses himself: A is the one who shall derive benefit from my estates? Does he mean all of them shall belong to him, or that he shall derive *some* benefit from them, but not all? This remains undecided. The same propounded another question: How is it if he had sold all his estates while he was sick—may he retract when cured, or not? And in answering this question, at one time it was said by R. Jehudah in the name of Rabh: He may retract; and at another time it was said by the same in the name of the same authority: He may not. However, they do not contradict each other, as the first decision holds good in case the money obtained was still in his hands, and the second applies in case the seller had expended it by paying his debts.

The schoolmen propounded another question: If a sick person has confessed, " I owe so much to so and so," shall it be taken for granted, and his creditors acquire title to the cash or estates left; or, probably, that he said this for the purpose that, should he be cured, his children should not think that he was rich, and therefore the man whom he mentioned in his confession takes nothing? Come and hear: Aisur, the proselyte, had thirteen thousand zuz with Rabha. R. Mari was his son (whose mother Rachel, daughter of Samuel, who was in captivity, was pregnant with him from the same Aisur when he was still a heathen before marriage, and although he was born after the father had embraced Judaism, according to the law he was not considered his son concerning inheritance, and also must not be named after him, therefore Mari was named Mari b. Rachel, after his mother). Said Rabha: I do not see any lawful case which could make R. Mari inherit the money deposited with me. By inheritance he cannot, as, according to the law, he is not considered an heir. Should his father while sick make

it a gift to him, there is a rule that he who can be an heir is fit to receive the gift, but not he who is not fit to be an heir. There is also a rule that to coins title cannot be given by exchange; and if his father would present him with real estate, which is lawful, his father does not possess it; and if by transferring them from me to him in the presence of all three of us, then certainly, if he would send after me, I would not listen. Which R. Aiqua b. R. Ami opposed, saying: Why, then, let Aisur confess that the money in question belongs to Mari, and with his confession title would be given to him. While so discussing, Aisur got wind of it, and confessed. Rabha became angry, saying: They are instructing people how to make their claims good and do harm to me.

"*Reserving some ground for himself,*" etc. But what is meant by this? Said R. Jehudah in the name of Rabh: It means real estate, or ground by which his livelihood is assured. And R. Jeremiah b. Abba maintains: The same is the case when he left movable property. Said R. Zera: See how the decisions of our elders correspond. Why is it said real estate? Because it is supposed that a sick person would think, "If I should be cured, I shall get my livelihood from this estate." The same is the case if he left movable property; he relies upon it. R. Joseph, however, opposed: I do not see such a correspondence at all. He who says "movable property" does not correspond with our Mishna, which states plainly, "ground" (real estate); and he who said "to be sufficient for his livelihood" also does not correspond with it, which states "some real estate," which cannot be explained that it should suffice for a livelihood. Said Abayi to him: Does the Mishna mean in each case when it mentions ground, that it is not changeable for movable property? Did not R. Dimi b. Joseph say in the name of R. Elazar, referring to a Mishna in Tract Gittin, in which also some ground is mentioned: Movable property is also considered a remainder in that case? There it is different. It should not state "ground" at all; but because it begins with the law of Peah, which applies to ground no matter how small it is, etc., it uses the same expression at the end. But in reality there is a difference between real estate and movable property. It was also questioned: Is this a rule—that wherever the expression, a trifle, is mentioned

in the Mishna, it does not mean a certain quantity? Is there not a Mishna in Chulin: "If five sheep give some wool, the law of the first shearing applies to it"? and to the question: What does "some wool" mean? said Rabha: No less than a litra and a half, etc. Hence we see the expression "some" means a certain quantity? There also it should not state "some wool"; but because in the beginning it states: If each sheep gives a litra and a half, it expresses in the latter case "some wool," as the quantity from every five sheep is only one litra and a half.

It is certain that if one says, "I bequeath my movable property to so and so," he acquires title to all vessels or garments which are useful, except wheat and barley. And if he says, "*All* my movable property," wheat and barley are also included; and even the grinder of a handmill, but not the grindstone. And if he say, "All that is movable," even the latter is included. But the question arises: If among his properties were also bondsmen, is title given to them also, as they are also considered movable property; or are slaves under the category of real estate and title is not given?

Said R. Aha b. R. Ashi to R. Ivia: Come and hear Mishna 7 in Chapter IV. of this tract, which states: If he said, "I sell the town, with all its contents," slaves are included. From which it is to be inferred that slaves are considered movable property; as if they were considered real estate they ought to be included, even if he did not mention "with all its contents." But can you infer from it that they are considered movable property? Does not the Mishna express itself "even bondsmen"; and if they should be considered movable property, why "even"? We must then say that there is a difference between movable property which must be carried and that which is self-moving. The same answer can also apply to the theory that slaves are considered real estate. (See previous vol., p. 59.)

Rabha in the name of R. Na'hman said: In five cases the act of a gift is not considered unless the bequeather writes "all my estates," and they are: A sick person, his bondsmen, his wife, his children, and the estates of a woman who has bequeathed them to some one for the purpose that her future husband should not demand them at the marriage. "A sick

person"—as our Mishna states: If he reserved nothing for himself, the bequeathing is not considered. "A slave"—as there is a Mishna which states: If one has bequeathed all of his estates to a slave, the latter becomes free. If, however, he reserved some for himself, he does not. "His wife"—as is said above: If one bequeaths all his estate to his wife, it is considered that he has appointed her as a guardian only. "To his children"—as stated above: If one bequeaths all his estate to his children, but reserves for his wife some ground, she loses the right of her marriage contract. "And the estate of a woman who desires to hide it from her future husband"—as the Master said elsewhere: In such a case she must write *all* her estates, as only then she may retract after her marriage. But if she reserved something for herself, she loses the right. And in all those cases where they reserved for themselves movable property, their acts were invalid, except in the case of a marriage contract, to which the enactment of the rabbis was made for real estate only. Amimar, however, maintains: If the movable property in question was mentioned in the marriage contract, and while bequeathing all his estate to his children he reserved it for himself, it is considered, and his wife does not lose her right in the marriage contract.

If A bequeaths his estates to B, and among them were slaves, they are included, as they are also called estate, as said above. Earth is considered estate, as there is a Mishna: Estates which one can rely upon can be acquired with money, with a bill of sale, and with hazakah. Garments are also considered estate, as the same Mishna adds: And to that which cannot be relied upon, title is given only by drawing. Coins are also considered estate, from the same Mishna, which adds: Such estates which cannot be relied upon may be obtained with that which may be relied upon.* [Here is repeated from Baba Kama (p. 236) what happened to R. Papa when he had to collect twelve thousand zuz, as evidence that coins are considered estate.] Deeds are also considered estate. As Rabba b. Itz'hak said: There are two kinds of deeds. If one said to witnesses: "Give title of this field to so and so by a ceremony of a sudarium, and

* In the Talmud, wherever it means real estate, the expression is estates which one can rely upon—which means that if they are mortgaged for a loan the lender may rely upon them, as they cannot be lost by fire, etc.

write him a deed, he may retract as to the deed," but he cannot retract as to the field itself, as title was already given. But if he said: "Give title," etc., with the stipulation, "You shall write him a deed also," he may retract from both. And R. Hyya b. Abbin in the name of R. Huna said: There are three kinds of deeds: the two just mentioned; and the third, if the seller hastened and wrote the deed. As is said above: If the seller desire to write a bill of sale, he may do so even in the absence of the buyer; as after the buyer makes a hazakah on the estate, title is given to the deed wherever it may be found. As we have learned: Estates which cannot be relied upon are obtained with that which is to be relied upon, etc. (We see, then, that deeds are considered estate.) Catle are also so considered, as we have learned (Tract Shekalim, Chapter IV., Mishna g): "If one devote his possessions, and there are among them cattle fit for the altar, male or female," etc. Fowl are also so considered, as we have learned [ibid., h]: "If one devote his possessions, and among them . . . oils and birds," etc. Tephilin are also so considered, as we have learned: "If one devote his estates, among which tephilin were found, they must be left for him."

The schoolmen propounded a question: How is the case with the Holy Scrolls—as they must not be sold, are they considered estate or not? This remains undecided. The mother of R. Zutra b. Tubhia had transferred to Zutra her estates because she was about to marry R. Zebid. However, after marriage, Zebid divorced her. Then she came before R. Bibi b. Abayi, claiming that she retracted from her transfer, as she told R. Zutra plainly that only for the purpose of marriage had she transferred her estates to him. But he said: You transferred them on account of marriage, and you did marry. Said R. Huna b. R. Jehoshua: Because you are weak you speak weak words (see above, p. 306). Even according to him who said: "If she wishes to hide her estates from her future husband, title is given," it is only in case she does it without any remark; but in this case she said plainly to her son that she did it because of marriage. But now she is divorced.

The mother of Rami b. Hama bequeathed to him her estates on one evening, and in the morning she bequeathed them to her son R. Uqba. Rami then went to R. Shesheth,

who turned over the estates to him. And R. Uqba went to R. Na'hman's court, and he decided that the estates belonged to him (Uqba). R. Shesheth then went to R. Na'hman and questioned him: Why such a decision? If it is because she retracted from the first, this would hold good only should she be cured; but she was dead from this sickness, and her first will ought to be listened to? And he answered: So said Samuel: In such a case where a retraction holds good in case of a cure, it is the same if the retraction was made while still sick. Rejoined R. Shesheth: Samuel said so in case he has retracted and reserved the estates for himself? But did he say also that he might bequeath to another? And R. Na'hman answered: Yea! Samuel said plainly: One may do so, whether for himself or for another.

The mother of R. Amram the Pious possessed a bundle of deeds, and while dying she said: They shall be given to my son Amram. His brothers, however, came to complain before R. Na'hman, claiming that Amram had not made any drawing on the deeds; consequently he had not yet acquired title to them. To which R. Na'hman answered: The words of a dying person are considered as if written and delivered.

The sister of R. Tubi b. Matna bequeathed her estates to him on one morning, and in the evening came R. Ahadbui, who cried before her, claiming that people would say: The one brother is a scholar and the other not, and she has bequeathed to him. When the case came before R. Na'hman, he decided as he said above in Samuel's name, that the retraction held good. The sister of R. Dimi b. Joseph owned a part of a vineyard; and every time she became sick, she used to present it to him, and when cured to retract. At one time she became sick and sent to him: Come and acquire title to my estates. And he answered: I do not want them. She, however, sent again to him: Come and acquire title to them, so that, according to the law, I shall not be able to retract. He then went, reserved a part thereof for her, and then the ceremony of a sudarium was made. She again became cured, and again retracted, and came to R. Na'hman requesting that he should return to her her estates. And R. Na'hman summoned R. Dimi before the court. But he was not willing to listen, saying: To what purpose shall I go? All that was done was in

accordance with the law. She reserved of the estates for herself in case she should be cured, etc. He then sent to him: If you will not appear before the court, I shall prick you so that blood will not run (*i.e.*, put him under the ban). Then R. Na'hman examined the witnesses how was the case. And they said: The woman said thus: "Woe is me! I am dying," and then she said her will. To which R. Na'hman gave his decision: In such a case it is considered that she made the will because she was afraid she would die; and a will made in the fear of death may be retracted.

It was taught: Concerning a gift in part of a sick person, it was said before Rabha, in the name of Mar Zutra the son of R. Na'hman, who said in the name of his father: In one respect it is equal to a gift by one in good health; it means he cannot retract if cured; and in the other to a will of a sick person, as it needs not the ceremony of a sudarium. Said Rabha to them: I told you several times, "Do not put a clay-pot (see Chapter I., p. 14) on the neck of R. Na'hman." R. Na'hman said thus: It is considered a gift of one in good health and must be done with the ceremony of a sudarium. Rabha, however, objected to R. Na'hman from our Mishna, which states: If he reserved some ground for himself the gift is valid. Is it not to be assumed that no sudarium is needed? And he answered: Nay! It must be done with the ceremony of a sudarium. But does not the latter part state: If he reserved nothing, title is not given? And if it is as you say, why should it not be the same when made by a sudarium? And he answered: So said Samuel: If a sick person has bequeathed all his estates to strangers, although made with a sudarium, he may retract, because it is certain he made it in the fear of death. R. Mesharshia objected to Rabha from the following: It happened with the mother of Rukhl's sons that while sick she said: My jewelry shall be given to my daughter, and is worth twelve manas. And she died; and the sages listened to her will. (Hence we see that, although it was a part of her estate, and it was not made with the ceremony of a sudarium, it was nevertheless considered.) The case was, because she had mentioned: I am certain I shall die, therefore I bequeath this to my daughter. R. Huna b. R. Jehoshua, however, said: If the sick person has commanded while dying, a sudarium is needed; and all Bo-

raithas cited treat when the sick person has divided all his estates among different persons. And in such a case it is said above that the rabbis consider them as a gift of a sick person. The Halakha, however, prevails that for a gift of a sick person in part a sudarium is needed, even when he dies of that sickness; but if he commanded while dying, no sudarium is needed in case he dies. But if he was cured he may retract, even if it was done with a sudarium.

It was taught: A gift of a sick person, in which it was written that it was made with a sudarium—it is considered based upon two sources, and must be listened to. So declared the school of Rabh in the name of their master. Samuel, however, said: I do not know what should be done in such a case. The reason of the school of Rabh is: Because the will was made on two bases, it is equal to both—a gift of one in good health, from which he cannot retract, and to a gift of a sick person who said, "The loan I have with A, shall be given to B." And the reason of Samuel, who was doubtful in such a case, is: Perhaps the sick person made up his mind not to give title without a deed, and such cannot be written after death.

However, there is a contradiction from the following statement of Rabh's, to his one decision just mentioned, and the same is it with Samuel—namely: The message which Rabbin sent in the name of R. Abuhu (above, pp. 300-1), in which both Rabh and Samuel contradict themselves? Nay! There is no contradiction at all. Rabh it does not contradict, because in one case he speaks where it was made with a ceremony of a sudarium, and in the other where it was not. And to Samuel also there is no contradiction, as his decision in the case cited speaks when the sudarium was made to strengthen the act. (This will be explained farther on.)

R. Na'hman b. Itz'hak was sitting behind Rabha, and Rabha before R. Na'hman, who questioned him: Did Samuel indeed say that it is to be feared the sick person had perhaps made up his mind to give title by a deed only? Did not R. Jehudah say in his name: A sick person who has bequeathed all his estates to strangers, although made with a sudarium, if he was cured he may retract? Because it is known that this bequest was only because he thought he would die. R. Na'hman gestured, and Rabha remained silent. After R. Na'hman went out,

questioned R. Na'hman b. Itz'hak: Rabha, what does R. Na'hman mean by his gesture? And he answered: He means that title is given when the act was strengthened. And to the question: How is it known that the act was strengthened? Said R. Hisda: If it was written: "In addition to his gift the ceremony of a sudarium was made."

It is certain that if one bequeathed first to one, and thereafter to another, it is as R. Dimi said above: The later will abolishes the first. But how is it if he wrote and gave title with a sudarium to one, and thereafter he did the same to another? According to Rabh: Title is given to the first, as in his opinion it is similar to a gift by one who is in good health. But according to Samuel title is given to the second, as in his opinion it is similar to a gift of a sick person, and it is to be feared that he had perhaps made up his mind to give title only by a deed. So it was taught in the city of Sura. In Pumbeditha, however, it was taught as follows: R. Jeremiah b. Abba said: A message was sent from the college to Samuel: Let the master teach us—how is the law if one has bequeathed his estate to strangers with a sudarium? And his answer was: After a sudarium, nothing can be done. The schoolmen, however, understood that Samuel's decision was only if it was bequeathed to another; but if he became cured and wished to retract for the sake of himself, he might do so. Said R. Hisda to them: When R. Huna came from Khuphry, he explained that Samuel meant to say it holds good in any event (*i.e.*, he cannot retract even for himself). There was one who bequeathed his estates with a sudarium while he was sick, and thereafter became cured and wanted to retract, and brought up his case in the court of R. Huna. And R. Huna said to him: "I can do nothing for you, as you acted not in accordance with those who wish to retract after cure. They usually give title with one of the two—a document or a sudarium. You, however, have done both; and such an act can by no means be abolished." There was a deed of gift in which it was written: While I live and after my death. Rabh considered this as a will upon death, because death was mentioned. And Samuel considered it as a gift by one in good health, because while "I live" was mentioned—explaining that the word death is to be interpreted from time everlasting. Said Uhla: The

sages of Nahardea decided: The Halakha prevails with Rabh. Said Rabha: If, however, it was written: "While I *still* live," title is given. And Amimar said: The Halakha does not prevail with Rabha. Said R. Ashi to him: Is this not self-evident? Have not the Nahardeans decided: The Halakha prevails with Rabh? (And he rejoined:) One might say: When "*still* alive." Rabh also admits: I came to say that it is not so. There was such a case, which came before R. Na'hman in the city of Nahardea, and he sent the plaintiff to R. Jeremiah b. Abba in the city of Shum-Tamia, saying: Nahardea is the city of Samuel, and we cannot act against him, though the Halakha prevails with Rabh. There was also such a case which came before Rabha, and he decided in accordance with his own theory. And the plaintiff was a woman, who troubled him very much, saying: His decision was not in accordance with the law. He said then to R. Papa b. R. Hanon, who was his scribe: Write her a document that she won the case; but at the bottom write a few words from a Mishna in Middle Gate: "He may hire other laborers or deceive them" (that the court to which she shall bring my judgment will understand that I do not agree with it). And she exclaimed: I see you desire to fool me—may your ship sink! Rabha's followers dipped his clothes in water, to overcome the curse of the woman. However, they did not succeed, as Rabha was punished for this.

MISHNA *VIII.*: If in the deed it was not mentioned that he was sick, and he claims that he was sick at the time of writing and had a right to retract, while the plaintiff claims that he was in good health, it is for him to bring evidence that he was sick. So is the decree of R. Meir. The sages, however, say: There is a rule that it is always for the plaintiff to bring evidence.

GEMARA: There was a deed of gift in which it was written that it was done while he was sick in bed; but it was not mentioned that he died from that sickness. And Rabha said: It does not matter, as in reality he did die, and his grave is evidence. Said Abayi to him: But what evidence is this that he died from that sickness? Perhaps he was then cured, retracted, and thereafter died of another sickness? And that this is to be feared we may infer from a ship which sinks, when it is seldom that the men on board are saved. And, nevertheless, we apply

to such a case both the rigorous law concerning life and the rigorous law concerning death (*i.e.*, the wives of those who were on board are not allowed to marry, as perhaps their husbands are not dead, but have drifted to the shore at another place and remain alive, and also must not partake of Terumah in case their husbands were priests, as perhaps they are dead). So much the more in our case, in which the majority of sick persons become cured. Should we not fear that, because it was not mentioned in the deed that he died from that sickness, he was cured?

Said R. Huna b. R. Jehoshua: The decision of Rabha in this case is in accordance with R. Nathan of the following Boraitha (in such a case as stated in our Mishna, it depends on circumstances): Who has to collect from whom? If he, the bequeather, has to take out of their hands, he can do so without any evidence; but if they have to collect from him, evidence must be brought. So is the decree of R. Jacob. R. Nathan, however, maintains: If the case comes on while he is in good health, it is for him to bring evidence that he was sick when the deed was written. On the other hand, they have to bring evidence that he was in good health, if the case comes on while he is sick. (Hence we see that R. Nathan's decision is according to the circumstances at the time the case is before the court; and the same is Rabha's theory.)

"*The sages, however, say,*" etc. What kind of evidence is required? According to R. Huna: Witnesses shall testify that he was in good health when the deed was written. And according to R. Hisda and Rabba b. R. Huna: The evidence should be by approval of this deed (*i.e.*, the defendant claims that he was then sick, and consequently the deed is valueless; but if they bring evidence from the court that it was approved by it, he must not be trusted, as it is to be supposed that the court would not approve it if it was not aware that he was in good health). R. Huna, who required witnesses, maintains: R. Meir and the sages differ as R. Jacob and R. Nathan do. And R. Hisda and Rabba b. R. Huna maintain: They (Meir and the rabbis) differ as to whether a deed which is admitted by the signer must be approved by the court or not. According to R. Meir, it is not necessary; and according to the rabbis, it is.

Rabha is also of the opinion that the evidence in question

must be witnesses. Said Abayi to him: What is your reason? Shall we assume that because all other documents state it was done when he was on his feet and in good health, and here it is not so mentioned, it is to be assumed that he was then sick? Why not say to the contrary, as in all documents of a sick person it is written: "It was done while he was sick in bed," and here it is not mentioned, it is to be assumed that he was then in good health? (And he answered:) Since it can be so said, and also the contrary, therefore we leave the money or the article in the hands of its possessor; and it is for the plaintiff tc bring evidence.

The decision of this question is still in discussion, as R. Johanan and Resh Lakish also differ. According to the former, witnesses are required; and according to the latter, the approval of the deed.

R. Johanan objected to Resh Lakish from the following: It happened in the city of Bene Brack that one sold the estate of his father, and died; and his relatives complained that he was not of age when he died. And they came and questioned R. Aqiba whether they had a right to examine the corpse. And his answer was: First, you are not allowed to disgrace the dead; and secondly, the signs of maturity are subject to change after death. Now, according to my theory that witnesses are required, it is correct: as the buyers required evidence from the relatives, which they could not give, they asked for permission to examine the corpse. But according to your theory that the evidence should be by approval of the deed, let them, then, approve the documents, and hold the goods without any examination? And Resh Lakish answered: Do you think that his estates were still in the possession of his relatives, and the buyers were the plaintiffs? On the contrary, the estates were in the hands of the buyers; and the relatives were the plaintiffs. (Says the Gemara:) It seems to be so, as his relatives kept silence when Aqiba told them they were not allowed to examine; and if the buyers were the plaintiffs, they would certainly claim: We gave him money—let him be disgraced and disgraced. However, this cannot be taken as a support, as it can be said that therefore R. Aqiba said to them: "And secondly, signs of maturity are subject to change," because of their claim: Let him be disgraced.

(It was taught:) Resh Lakish questioned R. Johanan: There is a Mishna among the Mishnayoth of Bar Kapara: If one worked up a field and consumed the products as if he were the owner of it, and then one came and claimed, "It is mine," but the occupant showed him a document, whether bill of sale or deed of gift, and the plaintiff said, "I do not recognize such a document at all," the signatures which are on the document must be approved by the court (*i.e.*, it is sufficient that the witnesses should testify before the court that they recognize their signatures, but it is not necessary that they should testify that the sale or gift was made in their presence). If, however, the plaintiff claims: "I recognize this deed, but it was written only upon your request for a special purpose; but I never sold"; or, "I sold to you and never took any money," if the plaintiff brings evidence, then it must be done accordingly; but if there is no evidence, the deed is in force. Shall we assume that it is according to R. Meir, who said: "If one recognizes his document, the approval of it is not necessary," and not in accordance with the rabbis? And R. Johanan answered: Nay! I say that all agree such a document does not need any approval. Said Resh Lakish again: But there is a Mishna that they do differ. And he answered: That Mishna treats that the witnesses themselves impair the deed (*i.e.*, they testified that they signed it illegally). But can he, the giver of the document, be supposed to impair it? Rejoined Resh Lakish: But in your name it was said that you would approve the claim of the relatives who asked permission for the examination (cited above), as it seemed to you they were right. To which R. Johanan rejoined: This was said by Elazar, but *I* never said such a thing. Said R. Zera: If R. Johanan denies what was said by Elazar his disciple, will he also deny what was said by R. Janai his master? The same said in the name of Rabbi: If one admits that he wrote this document, it must nevertheless be approved. To which R. Johanan said, answering him: Rabbi, is this not the same as our Mishna states? The sages, however, say: It is for the plaintiff to bring evidence. And there is no other evidence but the approval of the document. And therefore (adds R. Zera), it seems that our master Joseph is right when he states in the name of R. Jehudah, quoting Samuel, that the rabbis said approval is not needed to a docu-

ment which is admitted by the signer. And he who holds that he still needs an approval is R. Meir. Also, by the expression of R. Johanan, "All agree," is meant the rabbis, as R. Meir was only a single individual who so holds. But does not the Mishna state the reverse? And also the Boraitha, does it not state in the name of the sages that it must be approved? Reverse the names in the Mishna, as well as in the Boraitha. But was it not stated above that R. Johanan is the one who requires that the evidence mentioned in the Mishna should be witnesses? This statement is also to be reversed (*i.e.*, R. Johanan said: The evidence should be with the approval of the deed). Then the objection must be reversed also—not that R. Johanan objected to Resh Lakish, but the reverse? Nay! So said R. Johanan to Resh Lakish: According to my theory that I require the evidence should be by the approval of the deed, it is correct that the buyers took possession of the estate which was sold to them by the alleged minor. But according to your theory, how can there be such a case—that the buyers should possess the estate? Where could they find witnesses who should testify that he was of age? And Resh Lakish answered him: I admit to you that the claim of the relatives ought not to be taken into consideration; for what was their claim as against the deed in which witnesses signed that "he was of age"? And there is a rule that witnesses have the preference; as it is assumed that witnesses would not testify unless they were aware of the case. Hence concerning this deed they would not sign it if they were not aware that he was of age.

It was taught: What must be the age of one who has the right to sell the estates left him by his father? Rabha in the name of R. Na'hman said: Eighteen. And R. Huna b. Hinna in the name of the same authority said: Twenty. R. Zera objected from the above case which happened in the city of Bene Brack, to whom R. Aqiba said: The signs of maturity are subject to change after death. And this can be correct in him who said eighteen, as then his relatives questioned the law if the corpse might be examined. But according to him who said twenty, of what use could the examination be? At that time the signs of maturity are already unrecognizable, as we have learned in a Mishna: If one gets to the age of twenty,

and the signs of maturity are not visible, they have to bring evidence that he has reached the age of twenty; and he, the castrate, is a legal "saris," who does not perform the ceremony of Halitzah and also cannot marry his brother's wife. Hence we see that after twenty the symptoms of maturity are already unrecognizable. The answer was: Was it not taught in addition to the Mishna by R. Samuel b. R. Itz'hak in the name of Rabh: Provided the symptoms of a "saris" were visible. Said Rabha: It seems that this explanation is right, as the Mishna states: "He, the castrate, . . . 'saris,'" from which it is to be understood that such signs were visible on the body; as if not, why should he be named "castrate"? But how is it if neither the signs of maturity nor of a "saris" were visible? How many years are needed, that he should be considered of age? Taught R. Hyya: After he reaches the majority of life (*i.e.*, thirty-six years, as life is considered seventy). It happened that such cases were brought before R. Hyya by the mothers, questioning him: What must be done, that the signs of age should appear? And he used to answer: If the lad was thin, see he should become fat; and if he was fat, he would advise that they should make him thin, as sometimes the signs came earlier because of thinness, and sometimes because of fatness.

The schoolmen propounded a question: How is he to be considered during the nineteenth year—nineteen, which is still not of age, or twenty? Rabha in the name of R. Na'hman said: The whole twentieth year, is he considered nineteen? And Rabba b. R. Shila in the name of the same authority said: As twenty. The statement of Rabha, however, was not heard from him plainly; but it was so judged from the following act: There was a lad who was between nineteen and twenty, who used to sell his father's estate, and Rabha had annulled all his acts. People who saw this thought that it was because he considered him not of age. In reality, however, Rabha did so because signs of foolishness were seen in him, as he used to free all his slaves.*

Giddle b. Menarshia sent a message to Rabha: Let the mas-

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* At that time it was prohibited to free a bondsman without a good reason, according to Roman and Persian, as well as to Jewish laws.

ter teach us! How should a girl of fourteen years and one day who has a knowledge of business be considered? And he answered: If she has a knowledge of business, then her sale is valid, but not otherwise. Why was the question for a female and not for a male child? Because so was the case.

There was one lad, less than twenty, who had sold the estate of his father, and his relatives instructed him that when he should be at the court of Rabha he should eat dates and throw the pits at Rabha's person (for the purpose that Rabha should see he was a fool, and so annul his sales). He did so, and Rabha did indeed annul the sales. When the judgment was written, the buyers instructed him to go into court and say: The Book of Esther can be bought for one zuz, and the same is the price for Rabha's judgment. And he did so. Rabha then decided: His sales are valid. And when his relatives told him he was so instructed by the buyers, Rabha answered: He understands business if it is explained to him, and in such a case his acts are valid; and his previous act, that he threw the pits at me, was because he is too much of a scamp.

Said R. Huna b. R. Jehoshua: Concerning witnesses—his testimony may be considered at such an age (between nineteen and twenty). Said Mar Zutra: But only concerning movable property, and not real estate. Said R. Ashi to him: What is the reason that he is fit to be a witness for movable property —because his sales are valid? If so, let children of six and seven years be fit for this, as there is a Mishna: The purchase or sale of movable property by minors is valid. And he answered: Witnesses must be men, as it is writen [Deut. xix. 17]: "Then shall both the men who have the controversy stand before the Lord," etc., which cannot be applied to children.

Said Amimar: If a lad of thirteen years and one day presented a gift to some one, his act is valid. Said R. Ashi to him: Why? Even concerning a sale where he should receive money, the rabbis enacted that it should be annulled, because he might sell too low. Shall we say, if he presents a thing without any money his act is valid? (Said Amimar to him:) And according to your theory, if such a lad bought a thing which is worth six zuz for five, should this be considered? This is certainly not so, because there is no difference whether it was worth more or less, as the rabbis annulled all sales made by such a lad who

does not understand business. And the reason is that the rabbis were aware that lads at such an age have an inclination for money; and if you should allow one to sell, he would sell all the estates of his father for a small amount. But concerning a gift it is different, as if he would not have any benefit from it, he would not do so; and therefore the rabbis enacted that his gift should be considered, so that others should also please him. R. Na'hman in the name of Samuel said: A young man before twenty may be examined for the signs of maturity concerning betrothals, divorces, the ceremony of Halitzah, and protesting against marriage, and as to selling the estates left him by his father. The Halakha, however, prevails, that between nineteen and twenty he is considered as before nineteen; and it prevails also in accordance with Giddle b. Menarshia, with Mar Zutra, and also with Amimar, and with all the laws which are stated by R. Na'hman in the name of Samuel.

MISHNA *IX.*: If one divides his estates verbally, no matter if he was in good health or dangerously sick, according to R. Elazar to real estate title is given by money, by a deed, and by a hazakah; and to movable property, title is given by drawing only. He was then told that it happened with the mother of the sons of Rukhl, who was sick and said: Give my jewelry, which is worth twelve manas, to my daughter, that the sages had listened thereto. And he answered: The sons of Rukhl ought to have been buried by their mother while they were still young (*i.e.*, they had bad habits, and therefore the sages fined them, that they should not inherit from their mother).

GEMARA: There is a Boraitha: R. Eliezer said to the sages: It happened with an inhabitant of the city of Mruni, who was in Jerusalem, that he possessed much movable property which he desired to present to different persons; and he was told that he could not give them title, unless he did so together with some real estate. He went then and bought a rock near Jerusalem, and said: The north side of the rock shall belong to A, and with it one hundred sheep and one hundred barrels; and the south to B, and with it one hundred sheep and one hundred barrels. And when he was dead, the sages approved his will. Hence we see that, though the rock could not be considered real estate, as it could not be used for anything, nevertheless title was given. And he was answered:

This is no support, as the Mrunian was in good health when he did so; but this cannot be done by a sick person.

R. Levi said: It is allowed to make the ceremony of a sudarium with a sick person even on Sabbath, lest he become exhausted; but not because the Halakha is in accordance with R. Eliezer of the following Mishna.

MISHNA *X.*: R. Eliezer said: If it happens that a sick person divides his estates verbally on Sabbath, it may be listened to, because it is prohibited to write; but not on week days. R. Jehoshua, however, maintains: It was said on Sabbath, *a fortiori* when it happened on week days. Similar to this is: One may acquire title for a minor, but not for adults. So is the decree of R. Eliezer. R. Jehoshua said: For a minor, and *a fortiori* for an adult.

GEMARA: Our Mishna is in accordance with R. Jehudah, as we have learned in the following Boraitha: R. Meir said: The reverse is the case. If this happened on week days, his words must be listened to, because he is allowed to write; but not on Sabbath, because he is not allowed to write. So is the decree of R. Eliezer. R. Jehoshua said, on the contrary: It was said on week days, and so much the more on Sabbath. R. Jehudah, however, said: R. Eliezer's decree was, if on Sabbath, his words must be listened to, because he is not allowed to write; but not on week days, when he is allowed to write. And R. Jehoshua's decree was to the contrary. And the same is the case as to the latter part of the Mishna.

MISHNA *XI.*: Suppose a house falls upon A and his father, or on any persons, that one of them has to be bequeather and the other inheritor, and it is not known who dies first, and to the estate there is a claim from the widow for her marriage contract, and from other creditors. The heirs of the father say that the son died first; and the creditors say that the father died first, and the son afterward. (*I.e.*, the creditors of the son who had a right to the estate only if he died after his father, so that with the death of his father the inheritance came to him. But if he was dead before his father, he has nothing in the estate. And this is what his brothers claim, that the creditors have no right in the estate left by their father. Concerning a marriage contract, that will be explained in the Gemara.) According to the school of Shamai, they have to divide; and according to

the school of Hillel, the estate must be left in the hands of the present occupants.*

If it happened that the house fell on him and his wife, the heirs of the husband claim that the woman dies first, consequently her husband has inherited from her; and the heirs of his wife claim that he died first, consequently they have a right to her marriage contract and also to her own estate. They have to divide, according to the school of Shamai. But the school of Hillel say: They must leave the estate in the hands of its present occupant. And the occupants are to be considered as follows: The estates belonging to the marriage contract are to be considered as in the hands of the husband's heirs. But her own estates, which she brought with her to her husband, and which ought to go out with her by death or divorce, are to be considered in the hands of the heirs of *her* father.

If, however, the house falls on one and his mother, both schools agree that it must be divided. R. Aqiba, however, said: I hold that they (the schools) differ in the latter case also; and the school of Hillel are still of the opinion that estates must be left in the hands of the occupants. Said Ben Azai to him: We deplore that the schools differ in the former cases, and you come to add the third one, in which the rabbis testify that they have agreed.

GEMARA: The estates which were brought by the deceased woman, mentioned in the Mishna—to her husband for usage of fruit only, according to the school of Beth Hillel. Who is to be considered the occupant? According to R. Johanan: The heirs of the husband. According to R. Elazar: The heirs of the woman. R. Simeon b. Lakish, however, said in the name of Bar Kapara: Such must be divided. And the reason of this statement was taught by Bar Kapara himself, that as the claims of both parties are equal (*i.e.*, the heirs of the husband claim that all the products of this estate belonged to the deceased, as he had a right to sell them, and therefore they belong to his heirs; and the opponents claim that they were only to be used while he was alive, and therefore what was not

* The Gemara to this Mishna we transfer to Mishna 8 of the succeeding chapter, as the proper place. We also deemed it necessary to put all three Mishnas which treat of falling houses together, though in the original text they are in three separate places.

consumed by him, if his wife were alive she would certainly take with her estate; hence it belonged to her, and after her death to us), it is to be considered doubtful money, the law of which is division.

"*R. Aqiba said . . . in the hands of the occupants.*" But who are considered their occupants? R. Aila said: The heirs of the mother; and R. Zera: The heirs of the son. When R. Zera ascended to Palestine, he retracted from his statement in Babylon and accepted the system of R. Aila. Rabba, however, retained the system of R. Zera as a Halakha. Said R. Zera: From my retraction, I see that the air of the land of Israel makes one wise; as after I came here I saw that my statement while I was still in Babylon was erroneous.*

"*Said Ben Azai to him,*" etc. Said R. Simlai: Infer from this that Ben Azai was an associate disciple of R. Aqiba; as if he were a disciple only, he would have said to him, "The *master* said," and not, "And you (thou)."

A message was sent from Palestine as follows: If a son has sold his share of the inheritance of his father to some one, and dies while the father was still alive, and thereafter his father died, the son of the seller has a right to take away the goods from the buyer. (Because, at the time sold, the seller has nothing as yet in his hands, and the sale was for that which would be his in the future; and as the son died before his father the goods were never his, and his son is now the heir of his grandfather, to whom the goods in question belong; hence he has a right to take them away.) And this is a complicated case in the law of money matters. But let the buyers say: Your father has sold, and you are taking away? What a claim is this! Cannot the plaintiff say: My basis is my grandfather, from whom I inherit (and my father had not any right to sell this—as explained above); and that such a claim is to be considered may be supported by [Ps. xlv. 17]: "Instead of thy fathers shall be thy children: thou shalt appoint them as princes in all the land." Hence it is not at all a complicated case in money

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* The commentators differ concerning the explanation of this, as well as concerning the completion of the text. Rashbam affirms that Rabba was not in the text at all. Gershom changes the question concerning the cases in the Mishna and explains them differently. We have done what we could to make the passage intelligible to the reader.

matters. And if such there be, it would be the following: A first-born who sold the share prescribed to him while his father was still alive, and died before his father, the first-born's son has a right to take away from the buyers after the death of his grandfather. Hence his father sold that to which he was entitled; and his son, whose basis is his deceased father, takes the goods away. And this is complicated, as he cannot say, "My basis is my grandfather," for the grandfather had nothing to do with the double share of the first-born son. But even this cannot be called a complicated case, as he may claim, "My basis is my grandfather, and not my father, who has never possessed the goods he sold; for now only do I take the place of my father, who was a first-born, and take his share." Hence it is in accordance with the usual law. Therefore, if in the message of Palestine was said "a complicated case," it might be the following: If one sign a document before he robbed some one, and thereafter he became a robber, who is no longer competent to be a witness, he has no right to testify to his handwriting; but others, who know his handwriting, may. Hence he is not trusted, and the others who came upon his basis are trusted. Is this not complicated? But perhaps it treats of when his handwriting was already approved by the court, while he was still righteous? Therefore it is to be assumed that they meant the following case: If one signed a document as a witness to a stranger, and thereafter he became his son-in-law, he has no right to testify to his signature; but others may testify that they recognize the writing of the son-in-law, and then it may be relied upon. Hence he is not trusted, and others are. And you cannot say that it means only when his handwriting was already approved by the court at that time, as R. Joseph b. Minumi in the name of R. Na'hman said plainly: Even in case it was not. However, even this cannot be called complicated, as it may be said that it is thus decreed by the law. A son-in-law must not witness in a case of his father-in-law, not because it is feared he may lie, but because it is prohibited, even if the son-in-law were Moses our master. Therefore we must come to the conclusion that the complication lies in the first case mentioned in the message, and the objection based on the cited verse is not to be taken into consideration, as the verse speaks of a "blessing." But how can you say that it

speaks of a blessing, and nothing is to be inferred from it? Does not our Mishna state: "If the house falls upon him and his son, or any persons," etc.? Does it not mean, by the "heirs of the father," grandsons, and "any persons," brothers of the deceased? Now, if you bear in mind that one cannot say, "I come on the basis of my grandfather," as the cited verse cannot serve as a support, then, even when the son dies first, how is it? Let the creditors say: We claim the inheritance of the father? Nay! By "the heirs of the father" is meant the deceased's brothers; and by "any persons," his uncles, brothers of his father.

"*One and his mother*," etc. R. Shesheth was questioned: Nay! A son inherits from his mother when he is already in the grave, so that his brothers from his father's side should inherit from him? (The illustration may be found above, p. 317.) Answered R. Shesheth: This we have learned in the following Boraitha: If the father was taken into captivity and died there, and at the same time his son dies in his country, or *vice versa*, and it was not known who died first, the heirs of the father and the heirs of the son (on his mother's side) may divide among themselves the inheritance. Now, if the son while in the grave could inherit from his mother, even if he dies first, let him inherit from his grandfather on his mother's side, and then his brothers on the father's side would inherit from him. Infer from this that while in the grave nothing is to be inherited. Said R. Aha b. Minumi to Abayi: This may be inferred also from our Mishna, which states that concerning one and his mother all agree that they must divide. And if the law of inheriting in the grave were in force, let him inherit from his mother while in the grave, the same to revert to his brothers on the father's side. Hence such a law does not hold good. And why not? Said Abayi: There is the same expression in the Scripture concerning the inheritance of a husband from his wife, and a son from his mother. As the first does not inherit while in the grave, so it is with the second, etc. (This has already been explained in Chapter VIII., p. 254.) (Here is repeated the whole story of Bar Sisin's estate, preceding volume, pp. 86-87.)

CHAPTER X.

HOW DEEDS SHOULD BE WRITTEN AND WHERE THE WITNESSES SHOULD SIGN. CONCERNING ERASURES OF SOME WORDS IN DEEDS. IN WHICH CASES BOTH PARTIES MUST BE PRESENT AT THE WRITING OF THE DEEDS, AND IN WHICH ONE OF THEM SUFFICES. CONCERNING A DEPOSITED DEED WHICH WAS PAID IN PART. HOW SHALL THE COURT APPROVE AN ERASED DOCUMENT? PROPERTY FOR PRIVATE USE WHICH WAS LEFT TO POOR AND RICH BROTHERS.

MISHNA *I.*: A simple "get" * (document) the witnesses must sign at the end of the contents. A folded one, however, the witnesses must sign outside.† But if the witnesses signed their names outside in a simple one, or inside in a folded one, both are invalid. R. Hanina b. Gamaliel, however, said: If in a folded one the signatures of the witnesses were inside, it is valid, as it can be taken apart and will constitute a simple one. Rabbon Simeon b. Gamaliel maintains: All must be done as is the custom of the country. A simple document must be signed by two, and a folding one by three witnesses. If there was only one witness to a simple and two to a folding, both are invalid.

GEMARA: Whence is this deduced? Said R. Hanina: From [Jer. xxxii. 44] "Men shall buy fields for money, and write it in deeds, and seal them, and certify it by witnesses," etc. "Write it in deeds" means a simple document; "seal" means a folding one; "certify" means by two witnesses; "by witnesses" means three. How so? We must say, then, two

* All documents were called by the Mishna "get." This term was afterwards applied to a bill of divorce. The Gemara, however, uses the term "shtar" for documents.

† In ancient times they used to write documents as follows: The scribe wrote one line, then left a blank the size of the line written, and folded it over and sewed it; then he wrote on top of the folding, and again left a blank of the same size, and folded it over the writing and sewed again, and so on; so that after the document was complete the signatures of the witnesses remained on the outside.

witnesses for a simple, and three for a folding one. But perhaps the reverse? Common sense dictates that a folding one, which is added to in folding, should be added to also in witnesses. (The discussion proceeds to deduce this from the Scriptures, which were objected to as usual, and the Gemara came to the following conclusion): The folding one is only an enactment by the rabbis; and the verse above cited was only a light support. And why this enactment? Because of the many priests who used to live in their city. (The law prescribes that a priest, having divorced his wife, it is prohibited to him to remarry her; which is not the case with a commoner.) And as the priests are usually ill-tempered, they used to divorce their wives as soon as they became angry. Therefore the rabbis enacted that the "get" should be folded and sewn several times, that it might prolong the time, in order that they should become quiet, and recede from their previous intention. This is correct concerning divorces. But why for other documents? Because all kinds of documents were then called "gets," they enacted that all should be done in one manner.

In what place should the witnesses sign a folding document? According to R. Huna: Between one folding and another (*i.e.*, in the folding space above the lines, and thereafter it was folded and sewn so that the signatures were inside). According to R. Jeremiah b. Abba: On the reverse side, and exactly opposite the writing. Said Rami b. Hama to R. Hisda: According to R. Huna, who maintains in the folding space above the lines which is thereafter also folded, it is to be assumed that it remains inside; but this is not so, as it happened that a folding document was brought before Rabbi, and he exclaimed: There is no date to it. To which R. Simeon his son answered: Perhaps the date is inserted, etc. (*post*, p. 363). Now, if it were as R. Huna said, Rabbi ought to say: There is neither date nor witnesses (as the witnesses signed inside, one could not sew it when it was folded). And R. Hisda answered: Do you think that R. Huna means between the folding inside? He meant outside. But if so, why should not forgery be feared, as one can write inside what he likes, while the witnesses have already signed outside? In the document must be written at the end, "All its contents are true," and they re-

main forever. Hence to that which is written thereafter no attention is given. But it is still to be feared that after it is written he can forge what he pleases, and then write again, "All this is true," and have it signed by other witnesses? A document must contain only one approval that "all is true," but not more. But still it is to be feared that he can erase the approval, adding what he pleases, and then write, "All is true," etc. To this it was said by R. Johanan: If there was inserted a word between the lines, and thereafter the witnesses testify it was inserted at their instance and they approve it, the document is valid; but if some words were erased, then, although approved at the end, the document is nevertheless invalid. And this was said concerning an erasure in the place of the words "all that is written is true," and the size of these words. But even according to R. Jeremiah b. Abba, who said: On the reverse, and opposite the writing (*i.e.*, where the writing finishes inside, he shall begin opposite to write his name; so that if there should be some lines more over the signature of the witness it would be considered forgery), it is also to be feared that one might forge some lines, and add one more witness, opposite the forgery, and might say: My intention was to add one witness more? And the answer was: Do you think that the witnesses have signed lengthwise, in order? No! They signed one under the other, so that no more lines after the witnesses' signatures could be added.*

R. Itz'hak b. Joseph in the name of R. Johanan said: To all the erasures which are in the document must be written at the end, "With this signature we approve them," etc.; and in the mean time they must mention the abstract of the contents in the last line. And why so? Said R. Amram: Because the last line is not taken into consideration, as it can easily be forged; as usually the witnesses do not sign so near to the writing that one line could not be inserted, and therefore if the abstract of its contents is written attention is given, but not to something new. And to the question of R. Na'hman: What is the basis of your statement? he answered: The following Boraitha: If the signatures of the witnesses were sepa-

* The text continues to discuss the different kinds of forgery possible, and gives illustrations so complicated that it would be difficult for the reader to get any idea of them. They are unimportant, and therefore omitted.

rated by a space of two lines from the writing, the document is invalid; but if by one line, it is valid. Let us, then, see what is the reason that two lines' space make the document invalid. Is it not because one can forge the two lines? But the same can be done with one line also? We must then say that if a new sentence is written on the last line it is not taken into consideration. And so it is.

The schoolmen propounded a question: How is it if there is space for one line and a half? Come and hear the following: If there is space for two lines, it is invalid; for less than two, it is valid. If there were four or five witnesses to a document and one of them was found to be a relative, or incompetent for some other reason to be a witness, the document may remain in force by the remaining witnesses. And this is a support to Hezkiyah, who said: If there was a space left, and this was filled up with the signatures of relatives as witnesses, the document is valid. And do not be surprised at such a law (why should not the signatures of the relatives who are not competent to witness in that case harm this document?), as such a law is to be found concerning a Sukka: If on the roof of the Sukka was space to the size of *three* spans uncovered, it makes the Sukka invalid; but if it was covered with illegal things, the size of *four* is needed to make it invalid.

The schoolmen questioned: In the two lines in question, is it meant with their usual space or without? Said R. Na'hman b. Itz'hak: Common sense dictates that their space is included; as if it were supposed that it meant without, of what use could be the size of one line without any space to it? (If one should come to forget this line, he would then be compelled to write it in such characters that it would be entirely different from the original and immediately recognized. Infer from this, therefore, that "with their space" is meant.)

R. Sabbathi said in the name of Hezkiyah: The space of the two lines in question means of the handwriting of the witnesses, not of the scribes; as if one wants to forge, he does not go to the scribes (and usually the handwriting of a commoner is larger than that of a scribe). And what size is meant? Said R. Itz'hak b. Elazar: As in writing, *e.g.*, $\left\{\begin{matrix} l\,g\,k\,z \\ k\,z\,l\,g \end{matrix}\right\}$, which makes two lines in four spaces. According to R. Hyya b. R.

Ami in the name of Ula: Two lines and three spaces. According to R. Abuhu: One line and two spaces.* Said Rabh: This was all said about the space between the contents of the document and the signature of the witness. But from the signature of the witness to the approval of the court, it does not matter how much space is left. R. Johanan, however, said: All this was said concerning the space from the contents to the signatures of the witnesses; but concerning the space from the signatures of the witnesses to the approval of the court, even if there was one line, it is invalid.†

"*R. Hanina b. Gamaliel,*" etc. Rabbi objected to the statement of R. Hanina, thus: How could one make from a folding one a simple, if their dates were entirely different? As in a simple document which is dated according to the years of the king, if the king was in his first year, it is written: On fourth day of such and such a month, in the first year of king so and so; and in a folding one they used to add one year to the kingship of the ruler (*e.g.*, when it was in the first year, they used to write in the second; and if in the second, they used to write in the third). (Rashbam says: It was the custom of the nations to add one year to the kingship of the ruler in their documents. And the rabbis enacted: In a folding one it shall be dated according to the custom of the land, for the above-mentioned reason; but not in simple documents.) Now, if you say that it can be taken apart and made a simple one, it may happen that one can borrow money with a folding one, and during this time may come into some money and pay his debt before due; and to the request for a return of the document, one may say that he lost it, and give a receipt. Then, when the document falls due, he can make it into a simple, and require his money again (as in the folding one there was added one year, hence the time due in a simple comes one year later, and he can claim that he borrowed money again for the current year)? Rabbi holds: Concerning a folding one, no payment is made upon a receipt unless the document is returned or destroyed.

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* Here also are illustrations of Hebrew words, which it would be difficult for the English reader to understand, and are therefore omitted.

† We have omitted the discussion in the Gemara as to the reasons of Rabh and Johanan about the risk of forgery, with many illustrations of great complication, which would hardly be understood if translated, and are also of no importance.

But was, then, Rabbi acquainted with a folding document? Did not one come before Rabbi, who was about to annul it because it bore a later date? And Zunin said to Rabbi: So is the custom of this nation, that if the king has ruled one year they count him two; and if two, three. After he had heard it from Zunin, he enacted the law that no money should be paid upon a receipt. There was a document in which was written: In such a date of the year of Orkhon, A had borrowed money from B (but the number of the year was not written), and R. Hanina, before whom the case came, said: It must be examined when this Orkhon ascended the throne; and perhaps it was several years after, as the meaning of Orkhon is "lengthy," and he was named Orkhon because he was a good many years on the throne. Said R. Hoshea to him: So is the custom of this nation: the first year they named him Orkhon, and the second year Digon. Hence this document must be counted from the first year of the present ruler. But perhaps it was when he ascended the throne the second time, as once he abdicated and then ascended again? Said R. Jeremiah: At the second time he was named Orkhon-Digon, and not Orkhon only.

There was a folding document which came before Rabbi, and he said: There is no date to it. R. Simeon his son then said to him: Perhaps it is inserted between its folds! He took it apart, and found the date. Thereupon Rabbi scrutinized him. To which Simeon said: Not I was the writer of it, but Jehudah the Tailor. And Rabbi answered: Leave out slander. It happened at another time that R. Simeon was sitting before Rabbi, and reading for him a chapter of Psalms, and Rabbi said: How correctly and nicely it is written. To which Simeon answered: Not I, but Jehudah the Tailor, wrote it. And also to this Rabbi remarked: Leave out slander. (Questioned the Gemara:) It is correct that the first time he told him he should leave out slander, as Rabbi disliked folding documents, and was angry with the writer of it. But what slander was it if he said that the correct and nice writing was by Jehudah? This is in accordance with R. Dimi the brother of Safras, who taught: One must be careful in praising his neighbor, as very often blaming comes from praising.

R. Amram in the name of Rabh said: From the following three transgressions one is not saved day by day, namely: (a)

Thought about sin (*e.g.*, if he sees a handsome woman); (b) calculation of the effects of prayer—expectation of the granting of one's prayer as a due claim; (c) and slander. Slander! Do you mean that people slander one another every day? It means indirect slander (*e.g.*, while praising or talking of one, one indirectly comes to blame). R. Jehudah said in the name of Rabh: The majority of men are suspected of robbing (*i.e.*, in business every one looks out for himself, without taking care lest he do wrong to him who deals with him), the minority are suspected of adultery, and all of them of indirect slander.

"*All must be done as is customary in the country.*" But does not the first Tana also hold that the customs of the country are to be observed? Said R. Ashi: At those places where a simple is customary, and one told the scribe to make it, and he made him a folding one, it is certainly invalid; and *vice versa.* The point of this difference, however, is the places where both are customary, and he ordered the scribe to make for him a simple, but he prepared a folding one. According to the first Tana: It is invalid. According to R. Simeon: It is valid, as it may be supposed that he ordered him to make for him a simple only for the scribe's sake, that he should have less trouble; but if he did not heed, and made a folding one, it must not be ignored. Said Abayi: R. Simeon b. Gamaliel, R. Simeon, and R. Elazar all are of the opinion that in such a case it must be supposed that the giver of the order did so only to show him what was better for him; but he did not intend to be particular. B. Gamaliel as just mentioned; R. Simeon with his statement that if one has deceived a woman, not to her evil, but to her good (*e.g.*, if he said to her: You are betrothed to me with this *silver* dinar, and it was a golden one), his act is valid; and R. Elazar of the following Mishna: If a woman said: Go and receive my divorce at such and such a place, and he received it at another place, it is invalid. But according to R. Elazar it is valid, as it is to be supposed that she only showed him the place where she supposed it was better for him to go, but was not particular in her words.

"*If there was only one witness to a simple,*" etc. It is correct what the Mishna teaches us: A folding document which was signed by two witnesses only is invalid, as in all other cases two witnesses suffice. But to what purpose does it state

that one witness to a simple is invalid? Is this not self-evident, as there is no case in which one witness should be sufficient? Said Abayi: It teaches: Even if, in addition to that witness who has signed, there were another who testified the same verbally, it is nevertheless invalid. Amimar, however, had in a similar case which came before him decided that the document is in force. And to R. Ashi's objection that Abayi holds it invalid, he answered: I do not hold with him. But how would Amimar explain the above question—to what purpose is it stated in the Mishna? He would answer thus: It came to teach that as a simple document with one witness is invalid biblically, so it is with two witnesses to a folding. And as a support to Amimar there may be taken the following: The colleagues of R. Jeremiah in Palestine sent a message to him: How is it if there is one witness in writing and the other verbally—should they be conjoined for decision upon their testimony, or not? We do not question, how is it according to the first Tana, the opponent of R. Jehoshua b. Kar'ha, who maintains, in Tract Sanhedrin: Even two with two must not be conjoined under certain circumstances, and so much the less one with one. But our question is, how is it according to R. Jehoshua, who decided: If there were two witnesses in writing and two verbally, they are to be conjoined? Does he hold the same when there was one and one, or not? And R. Jeremiah answered: I am not worthy that you should send to me such a message. But as you have already done so, I may say that the opinion of your disciple is that they may be conjoined. (Said R. Ashi:) We have heard that the message was thus: The colleagues sent to R. Jeremiah: How is the law if, of two witnesses, one of them has testified before one court and the other before another—may both courts be conjoined to decide upon their testimony? We are aware that according to the first Tana, the opponent of R. Nathan: Even if they had testified at different times before one court, their testimony is not to be taken into consideration, two courts are out of the question. But according to R. Nathan, who says: "In one court their testimony may be conjoined," does he hold the same with two courts, or not? And R. Jeremiah answered them as said above. Rabhina, however, said: The message was thus: If three were sitting as a Beth Din to approve a docu-

ment, and thereafter one of them died, must they write in their approval, "We were sitting three, but one is gone"; or is it not necessary? And he answered them: I am not worthy that you should send questions to me, but as you have done so, I may say that the opinion of your disciple is that it is necessary they should write, "We all three were sitting as a Beth Din, according to the law, to approve this document, but one of us is gone, and therefore only we two sign." And for this answer R. Jeremiah was returned to the college (above, p. 71, it was written that he was driven from the college).

MISHNA *II.*: If in the document was written, "hundred zuz which make twenty selas," he collects only twenty selas. If, however, it was written, "hundred zuz which make thirty selas," he collects only one mana (which only makes twenty-five selas). If there was written, "silver zuz which *are*," and the preceding words were erased, then the document is good for no less than two; "silver selas which *are*," and the preceding was erased, no less than two selas; "dracontiums which *are*," it means also no less than two.

If on the top of the document was written "a mana" and on the bottom "two hundred zuz," or *vice versa*, the last one must always be taken into consideration. But if so, why is it at all necessary that the amount should be written at the top? To the end that should it happen that in the words of the bottom one letter should be erased, then we may learn it from the top one.

GEMARA: The rabbis taught: If it was written "silver," without mentioning any particular coin, the document is good for no less than one silver dinar; and if "silver dinars," or "dinars of silver," then it is no less than two silver dinars. If, however, "silver to be paid with dinars," then it is no less than two golden dinars (it being understood that he borrowed from him silver to be paid with gold dinars, and as there is a plural it is no less than two).

The master said: "Silver no less than a dinar." But perhaps it means a piece of metal? Said R. Elazar: It means it was written a silver coin, but it was not mentioned which. But if so, why should it not mean perutas? Said R. Papa: It treats of those places where the perutas were not made of silver.

The rabbis taught: If the documents read "gold," it is not less than a golden dinar; "golden dinars," or "dinars of gold," it is not less than two golden ones. If, however, it was written, "gold to be paid with dinars," he must pay in gold the value of two *silver* dinars. But why should this not be explained: He shall pay him in good gold to the value of two golden dinars? Said Abayi: The defendant has always the preference (*i.e.*, by the general name dinar is meant a silver one; of a golden dinar it must be said plainly *golden*, and as here it is mentioned to be paid with dinars, and the word *gold* is omitted, the holder of the document has to suffer). But why in the first case, where it reads "silver to be paid with dinars," you say he shall pay two golden dinars? Said R. Ashi: That Boraitha treats of when the document reads "denri," and the latter Boraitha when it was written "*denrin*"; and "denri" means gold, and "denrin" silver. And my support is from a Mishna in Tract Kinin: ". . . It happened that the price of kinin in Jerusalem increased to the extent of denri in gold. Said R. Simeon b. Gamaliel: I swear by the Temple that I go not to bed this night before their price shall decrease to denrin." Hence denrin means silver, and denri gold.

"*On the top of the document*," etc. The rabbis taught: The bottom may be learned from the top when there is only one letter erased; but not when two (*e.g.*, if it was written, "Hanan of Hanani," or "Anan of Anani"—*i.e.*, the *i* was erased). Let us see! Why not two letters? Because if there were a name of four letters, two would constitute one half of a name. The same can be said with one of two letters, as there are names which consist of two letters only;* then the one would be one half of a name. Therefore we must say that the exception of two letters is because it might happen in a name of three letters, and when two are erased the greater part of the name is missing.

There was a document in which was written "six hundred and a zuz," and R. Chrabia sent it to Abayi, questioning him: Does it mean six hundred staters and one zuz, or six hundred perutas and a zuz. And he answered: Eliminate perutas, which it is not usual to write in a document, as generally they are counted together to make from them dinars or zuz. This

* In the Bible there are many examples of names which consist of only two letters.

must therefore mean six hundred staters. But as there are staters of two zuz, and also others of the same name of half a zuz, and it was said above that the defendant has the preference, the holder of the document must suffer, and he takes only six hundred half-zuz and a zuz. Abayi said: If one desires that his signature shall be known in the court, he shall not write it at the bottom of a paper, as one can find it, but write at the top that he owes him money. And there is a Mishna: If one shows a document with his handwriting that he owes him money, he may collect from unencumbered estates.

There was a toll-master of a bridge who was a Jew, who said to Abayi: Let the master show me his signature, as it is my custom to allow the rabbis to pass without pay (I would leave it with my assistants so that if it should happen you would like to pass, they will not demand payment). Abayi showed him on the top of a piece of paper. He, however, tried to draw the paper so that the signature should come a little lower, and Abayi said to him: Do not try, as the rabbis have preceded you with their advice to sew a signature at the very top of the paper. Abayi said again: From the word "thlath," which means three, to the word "eser," which means ten, one shall not write in a promissory note at the end of the line, to prevent forgery.* But if it happened that he did so, he should repeat the word two or three times, so that one of them should occur in the middle of the line.

There was one document in which was written: "A third of a vineyard"—in Aramaic "Thiltha Beperidisa"—and the owner of this document erased the top and the bottom of the first letter of the second Hebrew word, so that from the Beth he made a Vav, which means "and," so that the document, as brought before Abayi, read: "A third and the vineyard," and claimed a third of the seller's garden and the whole vineyard. When Abayi examined the document, he asked him: Why does the Vav stand so extended in the world? He then urged him to confess, which he did.

There was another document, in which was written: The shares of Reuben and Simeon my brothers ("Achai" in He-

* "Thlath" means three, "thlathin" thirty; and so also is it with all the words from three to ten: *e.g.*, "arba" means four, and with the suffix "in" it means forty; "eser" means ten, "eserin" means twenty.

brew) were sold to me. The buyer, however, added a Vav for the word Achai, and as the brothers had another brother by the name of Achai, he claimed that he bought the shares of all three brothers—Reuben, Simeon, and Achai. With this document he came to the court of Abayi. And there also Abayi asked him: Why is the world so narrow to the Vav? And also he was urged to confess, which he did. There was another document, which was signed by Rabha and R. Aha b. Ada. When it was brought before Rabha, he said: I recognize my handwriting, but I never signed my name in the presence of R. Aha b. Ada. He urged the holder of the document to confess, which he did. Then said Rabha to him: I understand how you might easily forge *my* name; but how could you do so with R. Aha's, whose hands are trembling? And he answered: I would put my hand on the rope-bridge, to imitate a trembling writing.

MISHNA *III.*: A divorce may be written by the court for a husband in the absence of his wife (because, according to the ancient law, the consent of the woman was not necessary); and an approved receipt for a marriage contract to be handed to the woman in the absence of her husband, provided the court knows them—the husband must pay the fees. A promissory note may be written for the borrower in the absence of the lender, but not for the lender unless the borrower is present; and the fee is to be paid by the borrower. A bill of sale may be written for the seller in the absence of the buyer, but not for the buyer unless the seller is present; the buyer pays the fees. Documents of betrothal and marriage must not be written unless both are present—at the expense of the groom. The same is the case with documents for hiring, and contracting fields and gardens; and the expenses are to the contractors. Documents of arbitrating, and all other acts of mediating by the court, must not be written unless both parties are present—at the expense of both.

R. Simeon b. Gamaliel, however, maintains: The latter documents must be written in two copies, one for each party.

GEMARA: What does it mean—provided the court knows them? Said R. Jehudah in the name of Rabh: They shall know exactly the name of the husband concerning a divorce, and the exact name of the woman concerning a receipt.

R. Safra, R. Aba b. Huna, and R. Huna b. Hinna were sitting together in the presence of Abayi and were deliberating over the statement of Rabh just mentioned—concerning a divorce, the name of the husband, but not the name of his wife? and concerning a receipt, the name of the woman, though they do not know the name of the husband? Why should it not be feared that this man would furnish the divorce to another woman, whose husband bore the same name as himself? And the same is the case with the woman: she may furnish her receipt to a man whose wife bears the same name. Said Abayi to them: So said Rabh: The name of the husband and of his wife, concerning a divorce; and the same is the case with a receipt—the name of the woman and her husband. But why should it be prepared and given to the husband? Is it not to be feared that two men who bear one and the same name should reside in the same city (*e.g.*, Joseph b. Simeon), whose wives also bear the name of Rachel, and one can take a divorce and give it to the wife of the other? Said R. A'ha b. Hinna to them: So said Rabh: If two men of the same name reside in one city, they cannot divorce their wives unless both the men named and their wives are present. Still, it is to be feared that one may go to another city, name himself according to one of the inhabitants of his city, and take a divorce, and thereafter return to his city and furnish the divorce to the wife in whose husband's name the divorce was made out. Said R. Huna b. Hinna: So said Rabh: If one was known under one name thirty days in succession, there is no fear that he bears a false name, as he would be afraid to bear it for such a long time. But how is it if one requires a divorce should be prepared for him before he was known thirty days—shall he not be listened to? Said Abayi: This can be proved by somebody calling him suddenly by this name, and he answered. R. Zebid, however, maintains: A swindler knows what he is about, and is careful. And therefore it is no evidence if he answers to a sudden call.

There was a receipt approved by Jeremiah b. Abba. However, the same woman came into his court to claim her marriage contract several years later; and when her receipt was shown to her, she claimed to be not the same woman (*i.e.*, it was another woman who bore my name and signed the receipt). Said R. Jeremiah: I also was of that opinion, and I said so to

the witnesses who signed this document; but they told me you are the same but older, and therefore your voice has changed. And the case came before Abayi, who said: Although it was decided by the rabbis: If one said something in behalf of the plaintiff or the defendant, he has no right to retract from the first statement, and decide otherwise; however, with a scholar, who is not used to look in the face of a woman and to be particular as to her voice, it is different, as it must be supposed that after he was told she was the same, he himself had recognized her.

There was another similar case before the same R. Jeremiah, who said to that woman: I am sure you are the same. And also here Abayi decided: Although a rabbi is not used to look in the face of a woman, etc.; but when he says he did so, and is sure, he may be trusted.

Abayi said: It is advisable for a young scholar, who goes to betroth a woman, that he shall take with him a commoner; as otherwise they may substitute another woman, and he will not notice it.

"*The husband must pay the fees,*" etc. Why so? Because it is written [Deut. xxiv. 1]: ". . . he may write and give," which means at his expense. In our time, however, it is not so customary, because the rabbis put the expenses to the account of the woman, in case the husband should decline to bear the expenses and postpone the divorce in a case where the woman is compelled to demand it.

"*Paid by the borrower,*" etc. Is this not self-evident? It treats even where he takes money for business at a half profit.

"*The buyer pays the fees,*" etc. Is this not self-evident? It treats even in case the seller sold his field because of its infertility.

"*The expense of the groom,*" etc. Is this not self-evident? It means even if he were a scholar and the court were certain that they would be pleased to have him as a son-in-law even at their expense.

"*The expenses are to the contractors,*" etc. Is this not self-evident? It speaks even in case it must remain for a year or two unfertilized for the sake of the estate.

"*Arbitrating,*" etc. What kind of documents is meant? In this college it was explained: The documents of the claims

which the scribes of the court have to copy so that the parties should not change afterwards. R. Jeremiah b. Abba said: It means, in case each one chooses his arbitrator.

"*One for each party*," etc. Shall we assume that the point of their difference is, if one may be compelled not to act like a Sodomite? According to the first Tana: If one declines to pay the half of the expenses, it is an act of a Sodomite, and he must be compelled to do so. And according to R. Simeon: It is not, and he must not be compelled? Nay! All agree that such cases are to be compelled. Here, however, it is different, as the reason of R. Simeon's decision is: One may say, I would not like that my claim and my decided right should always be before your eyes, while I do not possess them; and this would be a burden to me, as if a lion would lie at my house, fearing every time that you might come to quarrel with me.

MISHNA *IV.*: If one has paid a part of his debt and deposited his document with some one, with the stipulation: If I should not pay you from date until a certain day, you may return this document to the lender, and finally he failed to pay; according to R. Jose: The depositary may return, and according to R. Jehudah: He must not.

GEMARA: What is the point of their difference? R. Jose holds: An asmachtha * gives title. And R. Jehudah maintains: It does not. Said R. Na'hman in the name of Rabba b. Abuhu, quoting Rabh: The Halakha prevails with R. Jose. When they came to say the same before R. Ami, he said to them: After such an authority as Johanan teaches us, once and twice, that the Halakha prevails with R. Jose, what can I do? However, the Halakha does not prevail with R. Jose (remarks the Gemara).

MISHNA *V.*: If it happened to one that a promissory note became erased, he must find witnesses who are aware of the date when it was written, and bring them before the court, and they have to make the following approval: A, the son of B, came here with his note, which was erased on such and such a day, and C and D were his witnesses.

GEMARA: The rabbis taught: The approval must be written as follows: "We three, E, F, G, the undersigned, were sitting together, and before us was brought by A, the son of B,

* This term is explained in previous volumes in several places.

an erased note, which was signed on such and such a day, and C and D are his witnesses." And then if there be added: "We have examined the testimony of the witnesses, and have found it correct," the holder of the document may collect with it, without further evidence. If, however, this were not remarked, he must bring evidence.

If a document was torn, it is invalid; but if it was torn of itself, it is valid. If it was erased or faint, if still recognizable it is valid.

What does it mean—"was torn," and "was torn of itself"? Said R. Jehudah: If it was torn by the court; and of itself means not by the court. How is it to be known that it was torn by the court? Said R. Jehudah: If the places where the signatures of the witnesses, the date, and the amount were written are torn. Abayi, however, said: The court used to tear it in its length and width.

There were Arabs who came to Pumbeditha, who used to compel the inhabitants to submit to them the deeds of their estates. The inhabitants of the city came to Abayi with their deeds, requesting him to take a copy of them, so that, in case they should be compelled to deliver to the Arabs the originals, the copies should remain, so that in the future they could be sued. Said he: What can I do for you, since R. Safra long ago decided that two deeds must not be written for one field, because it might happen that one would seize it once, and again thereafter. They, however, troubled him, and he said to his scribe: Write for them on an erased paper, and the witnesses shall sign on the paper which is not erased, as such a deed is invalid. Said R. Aha b. Minumi to him: But perhaps the writing will be recognizable, and then it will be valid, as stated in the Boraitha above? And he answered: I did not say he should write a correct deed: I meant he should write some letters of the alphabet.

The rabbis taught: If one comes before the court claiming that he has lost a promissory note from so and so, although he brought with him witnesses who testify, "We wrote and signed the note in question for the borrower, and in our presence he gave it to him," the court must not write another one. However, this is said only concerning promissory notes. But concerning deeds, if such a case happened, they may write him

another one, without mentioning that the seller is responsible in case it should be taken away by creditors. Rabban Simeon b. Gamaliel, however, maintains: This must not be done even concerning deeds. And he used to say also: If one has presented a gift to his neighbor by a deed, if the deed was returned by the beneficiary, the gift is considered returned. The sages, however, say: Nevertheless, the gift remains for the beneficiary. The master said: Without mentioning the responsibility of the seller. Why so? Said R. Safra: Because two deeds must not be written for one and the same field, for the reason it may happen that a creditor of the previous owner will take it away. Then, the buyer who has two deeds may use both deeds to take away the estates which were sold by A to D and E. (*I.e.*, A had sold a field to B, which was encumbered to C, the creditor of A; and C proclaimed his right to it. Then B proclaimed his right, based upon the deed, to the estate encumbered to C, and took away the estate from D, who bought it from A at a later date. After he did so, and the deed was torn by the court, he (B) would make a bargain with C that for a certain amount he should not hasten to take possession of the field to which he was entitled, but should wait a few years and then do it; for the purpose that C's first claim should be forgotten, and later on, when C should take possession of the field which was until now in the hands of B, it should seem to be as a new claim; and then, on the basis of the second deed retained by him (B), he should also take away from E the estates bought by him from A at a later date.

(Says the Gemara:) But as the promissory note of the creditor was torn by the court when he took away from him the first time, how came he to proclaim his right again? And should one say, in case it was not torn? Did not R. Na'hman say: The following is the order of claims before the court? The lender comes to the court to complain that the borrower does not pay his debt; then the court summons him, and if he does not appear it puts him under the ban, and a replevin is given to the lender, that he may levy on the estates of the borrower or of those who bought same from him at a later date than that of the promissory note. And when the creditor finds such estates in some other city, the court of that city tears the replevin and substitutes a document that he may collect such

and such an amount from such and such estate, after the appraisement shall be made for the court. And after this is done, the court furnishes him with a memorandum of the appraisement and tears the previous document. Hence a replevin in which it is not mentioned that the promissory note of the borrower was "torn by us" must not be taken into consideration by any court; and a document which was given for appraisement in which it is not mentioned that the replevin of such and such a court was "torn by us" is also not to be taken into consideration. The same is the case with the memorandum of appraisement with which the court furnishes him, if it is not mentioned that the document giving the right to make an appraisement of the estate for the debt of so and so was "torn by us." Hence the alleged bargain between B and C could not occur? The statement of R. Safras that two deeds must not be written is because it might happen that one should claim the field not for debt, but because he inherited it from his parents, and it was stolen by the possessors of it. In such a case the above-mentioned bargain may be made.*

Said R. Aha of Diphthi to Rabhina: According to the supposed bargain mentioned above, that B asked C that he should not hasten to take possession, to what purpose such a bargain? If he possesses two deeds, he may take away from D and E at one time? And he answered: By such an act he would invite investigation by his opponents, and they would find out the bargain.

One Mishna states: Concerning deeds, they may write another one, without mentioning the responsibility of the seller for the estate, in case it should be taken away. Why? Let the court write a correct deed and deliver it to the buyer, at the same time furnishing the seller with a document that the first deed was lost, and if such should be found, that it was of no value, as another deed was supplied to the buyer. The rabbis said before R. Papa, according to others before R. Ashi: Because this is not stated, we may infer that the court must not furnish the seller with such a receipt. And he answered: In other cases, receipts may be written. In this case, however, it is not because of the bargain mentioned above, but as the receipt

* The commentators give illustrations of how such a bargain might be made, so involved and far-fetched that we spare the reader their infliction.

which makes the first deed valueless is in the possession of A, and not in the hands of the buyers; and it might be that D and E, who had bought from A, would not be aware of such a document, and would not be in a position to protest against the estates being taken away from them by the creditors of A. But, finally, D and E would transfer their claims to A; and then he would show them the document, and the estates would certainly be returned to them? Yea! But meanwhile the creditors would consume the products, and it would be a difficulty for D or E to collect the value from them, as there is a rule: On consumed stolen property it is very hard to collect. It may also happen that D and E bought their estate without any responsibility on A's part; hence one may take it away without any claim from these parties. But if such a case is to be feared, why should they furnish such receipts in cases of loans, as the same may happen with promissory notes—that the goods should be taken away while the receipt is in the hand of the borrower? There it is different. If the claim comes with a promissory note which had nothing to do with this estate, the possessors of the estate would investigate the matter, whether the borrower had paid him the money due, and would not return the estate without consulting the seller, who is the debtor on that promissory note: which is not the case if the document was for real estate, as in such cases usually estates are claimed, and not money.

The master said: "It may be written without mentioning the responsibility," etc. How, then, should it be written? Thus said R. Na'hman: This deed is not for collection, neither from encumbered nor from unencumbered estates, but only to testify that the estate belongs to so and so, who is the buyer of it. Said Raphram: From this, where it must be written that such a document is not in force for collection, it may be inferred that in such a one where nothing is written there is authority to collect with it even from encumbered estates; as it is to be supposed that it is an error of the scribe, who had forgotten to insert the responsibility of the seller. R. Ashi, however, maintains: A document in which nothing is mentioned does not collect from encumbered estates. And the above Boraitha, which states, "not to mention the responsibility," etc., is not as R. Na'hman explained it, but is to be taken liter-

ally—that nothing is to be mentioned—and then he is not responsible.

There was a woman who gave money to one that he might buy estates for her. He bought them for her, without responsibility in case there should be claims. And she came to complain before R. Na'hman, who said: The woman is right, as she sent to you to the end that she should have benefit, but not that she should suffer damage. You, therefore, have to buy from the woman without responsibility, and thereafter to sell to her with your responsibility.

It is said above by R. Simeon b. Gamaliel: If one has presented a gift . . . the gift is considered returned. What is his reason? Said R. Assi: Because it is to be considered as if one were to say: I give you this for a present so long as you keep this document. Rabba opposed: If so, how is it if this document was torn or lost—must one also return the gift? Therefore, said he, the point of the difference between R. Simeon and the rabbis is thus: According to R. Simeon, title is given to documents and to all their contents by transferring; and therefore when the donee returned it to the donor, the latter acquired title to it and to its contents. But according to the rabbis, title is not given by transferring; hence when the donee takes possession of the gift, the returning of the document counts nothing.

The rabbis taught: If one came to claim a field, saying that he possesses a deed, and also that it was in his possession the years of hazakah—according to Rabbi, the main evidence should be the deed (if he cannot show it, his second claim of hazakah must not be considered); and R. Simeon b. Gamaliel maintains: The main evidence is the hazakah. What is the point of their difference? When R. Dimi came from Palestine, he said: They differ whether title is given to documents by transferring. According to R. Simeon b. Gamaliel, the transferring does not give title; and according to Rabbi, it does. Said Abayi to him: If so, you differ with my master, Rabba, who said above: R. Simeon b. Gamaliel holds: That transferring does give title. And he answered: And what if I do differ? Why not? Rejoined Abayi: I mean to say that the above Boraitha could be explained only as done by my master, but not otherwise. And then, if it is as you say, R. Simeon

contradicts himself. Therefore, said Abayi, the point of the difference between Rabbi and R. Simeon b. Gamaliel in the Boraitha just cited is: In case it happened that one witness who signed the deed was found to be a relative, or for some other reason incompetent to be a witness. And it is the same point in which R. Meir and R. Elazar differ. Rabbi holds with R. Elazar, who says that the final act of a divorce, or anything else, is to be considered done by the witnesses who are present at the transfer, and not by the witnesses who sign the document. And R. Simeon b. Gamaliel holds with R. Meir, who said: The final act is considered done by the witnesses who sign the document.

But did not R. Abba say: Even R. Elazar admitted that if there was any forgery in the document, or there were incompetent witnesses, the transferring is not considered, even when it was done by lawful witnesses? Therefore said Rabhina: All agree that if the court said, "We have investigated the testimony of the witnesses, and found it false," or that one of them was incompetent, the document is invalid, as R. Abba declared. And the above Tanaim differ concerning a document without witnesses at all. According to Rabbi, who holds with R. Elazar, if it was transferred in the presence of witnesses, the act is considered final; and according to R. Simeon, who holds with R. Meir, it is not. And if you wish, it may be said that the point of their difference is: Whether a document which the signer admits must or must not be approved by the court. According to Rabbi, it must not; and according to R. Simeon, it must. But have we not heard just the reverse in Middle Gate, p. 11? (The rabbis taught:) Therefore we must say that the point of their difference is: If one is obliged to convince the court of all the evidence one mentioned at the beginning of the trial, or it is sufficient if he convinces it of one part of it (*i.e.*, if he said, first, "My evidence is a deed, and also hazakah," and thereafter he was able to convince the court of the hazakah only). According to Rabbi: It is not sufficient unless he should show the deed. And according to R. Simeon: The latter evidence suffices. But if he should be able to show the deed, then all agree that the evidence of the hazakah would not be necessary at all. And this is similar to the following case: R. Itz'hak b. Joseph claimed to have money with R. Abba,

and came to complain before R. Itz'hak of Naf'ha. And R. Abba claimed: I paid you in the presence of A and B. Said R. Itz'hak (of Naf'ha) to him: Bring, then, A and B—they shall testify. Said he to him: Am I not to be trusted, even if they do not appear? Is it not a Halakha: If one borrowed money in the presence of witnesses, it is not necessary for the borrower that he shall pay him in the presence of witnesses? Rejoined the former: I hold with the Halakha which was said by you, master, in the name of R. Ada b. Ahaba, quoting Rabh: If one says, "I paid you in the presence of A and B," it is necessary for him that A and B shall come and testify. Said R. Abba again: But did not R. Giddle say in the name of Rabh: The Halakha prevails with Rabban Simeon b. Gamaliel? And even Rabh, his opponent, meant with his statement only to make his evidence clear before the court (but not because the law dictates so)? And R. Itz'hak answered: I also mean you shall make your evidence clear before the court, as I hold with Rabha; and if you are not able to do so, you must pay.

MISHNA *VI.*: If one has paid a part of his debt, according to R. Jehudah, the promissory note must be changed (*i.e.*, the old note must be torn, and a new one made for the balance). According to R. Jose: The lender has to give a receipt for the amount paid. Said R. Jehudah: Then, according to you, the borrower must watch his receipt so that it shall not be consumed by mice. Answered R. Jose: Yea! This is better for the lender, as if it should be a difficulty for the borrower to watch the receipt he will pay the whole debt sooner; and we must not impair the right of the lender.

GEMARA: Said R. Huna in the name of Rabh: The Halakha prevails neither with R. Jehudah nor with R. Jose, but the court must tear the first note and write him another one with the same date as the first. Said R. Na'hman, according to others R. Jeremiah b. Abba, to R. Huna: If Rabh were aware of the following Boraitha: "The witnesses tear the note, and write for him another one with the same date as the first," he would retract from his statement that this must be done by the court. And he answered: He was aware of this Boraitha, and nevertheless he did not retract, for the reason that only the court has the power to collect money, which therefore may tear and write another one with the former date, but not witnesses

who have done the message they were ordered to, as they have no right to do the same again without a new order. Is that so? Did not R. Jehudah say in the name of Rabh: If a deed was lost, witnesses may write another one, even if this occurred ten times, to one field. Said R. Joseph: Rabh meant a deed of gift. And Rabha said: Rabh meant a document without any responsibility of the estate for other claims.

Where is to be found the Boraitha cited above, of which Rabh was aware? It is thus: If one's debt was a thousand zuz on a document, and he paid five hundred, the witnesses may tear the document and write another one for five hundred, of the date of the old one. So is the decree of R. Jehudah. R. Jose, however, says: The document of the thousand remains, and a receipt for five hundred must be given to the borrower. And for two reasons it was said that a receipt should be written and handed to the borrower: first, because he should be compelled to pay as soon as possible; and, secondly, the debt should be counted from the first date. But does not R. Jehudah also say that a new document should be written with the same date as that which was torn? So said R. Jose to R. Jehudah: If you say that the document should be written from the first date, then I differ with you only in one thing—concerning the receipt; and if you think that the document should be written from the date on which a part was paid, then I differ with you in both.

The rabbis taught: If the document was written at the date used by the government, and such a date fell on a Sabbath or on the Day of Atonement, on which it is prohibited for an Israelite to write, this note is to be considered written with a later date, which is valid. So is the decree of R. Jehudah. But according to R. Jose, it is invalid. Said R. Jehudah to him: Did not such a case come before you in Cepphoris, and you made it valid? And he answered: I did so only with a case similar to that about which we are discussing, because, as the date fell on a Sabbath, it is highly probable that the document was of a later date; but in other cases, where such a supposition has no basis, I do not agree with you. But what answer is this? R. Jehudah also claimed that the case happened to be before R. Jose in Cepphoris. Said R. Pdath: All agree that if the date of the document was examined and found

to fall on a Sabbath, or on the Day of Atonement, it must be considered as with a later date, and it is valid. In what they do differ is: A document which is doubtful, if written with an earlier or a later date. Acording to R. Jehudah, who holds that in case of payment no receipt is given, but the document itself must be returned, it is valid, because it cannot do any harm to any one by being collectible twice. And according to R. Jose, who holds that for a payment in part the document must not be returned, and only a receipt is furnished, it is invalid, because he can collect with it the whole amount, as the receipt is in the hands of the borrower. Said R. Huna b. Jehoshua: Even according to them who say that a receipt may be written, it is only if a part or a half was paid; but for the whole amount no receipt is written, but he must return him the note; and if lost, he loses his money.

(Says the Gemara:) In reality it is not so, as a receipt may be written even on the whole amount; as it happened with R. Itz'hak b. Joseph, who had money with R. Abba, and when he demanded his money, R. Abba demanded his promissory note. And R. Itz'hak answered: The note is lost, and I will give you a receipt. And he answered: There are both Rabh and Samuel who taught that we do not write a receipt. And when this case came before R. Hanina b. Papi, he said: Rabh and Samuel were so beloved by us that if some would bring the earth of their graves we would keep it always before our eyes; but notwithstanding this, there are both R. Johanan and Resh Lakish who decided that a receipt should be given; and the same was said by Rabbin when he came from Palestine in the name of R. Ilah. Common sense also dictates so; as how can it be supposed that if the creditor lost the promissory note the debtor may consume the whole amount and enjoy himself? Abayi opposed: But after your theory that a receipt is to be written, how is it if the receipt is lost—should the lender collect the money again and enjoy himself? Said Rabha to him: Yea! So is the law, as we read in the Scriptures: "The borrower is a servant to the lender" [Prov. xxii. 7]. Said R. Yema, according to others R. Jeremiah of Diphthi, to R. Kahna: What is the basis of our custom that we write documents with later dates, and we also write receipts? And he answered: That which R. Abba said to his scribe: When it shall happen

that you have to write a document with a later date, you must write as follows: This document was postdated by us for a certain reason, and is dated not with the date it was ordered, but of to-day. Said R. Ashi to R. Kahna: However, in our day and in our country we do not act likewise. It is since R. Safras said to his scribe: Should you have to write a receipt for a lost promissory note, then, if you are aware of the date the promissory note was given, you must write: "The money which was due according to the note written on such and such a date was returned to the lender." And if you do not know the exact date, you must write: "The money due on a note of so and so, to so and so, was paid," not mentioning the date at all; and then, if the note should appear again, it will be of no value. Said Rabhina to R. Ashi, and according to others R. Ashi to R. Kahna: But why is it not customary in our time to do so, as we write documents with later dates without mentioning that they are postdated, and receipts with the date of payment, and we do mention the date of the document? And he answered: The rabbis enacted: One shall do so for his own sake; but if one does not care to do so, it will be his own fault if he should suffer damage. Said Rabba b. Ashila to the scribes: If you should have to write a deed of gift, or deeds in which the seller does not take the responsibility of the estate for the future, you shall do as follows: If you remember the date when the donor or the seller told you in the presence of witnesses to do so, you shall write that date; and if you do not recollect the exact date, you may write the current date, and it will not be considered false. Rabh told his scribes, and the same did R. Huna: When you are writing a document in the city of Shili, although you were ordered to do so in the city of Hini, you must write in the document the city in which you are doing it, and not the city where you were ordered.

Rabha said: If one holds a promissory note for a hundred zuz, and requests that it shall be rewritten in two notes, each of fifty zuz, his request is to be refused—for the sake of both the lender and the borrower: for the lender it is better to have one document, as, should it happen that he pay the half, he will give him a receipt, which the borrower will have to watch, and therefore he will hasten to pay his debt; and for the borrower

it is also better, as the law of a document paid in part is, that the lender must take an oath (and in case he is lacking cash the lender will give him time rather than take an oath). And he said again: If one has two notes of fifty each, and he requests that one of a hundred should be made instead of the two, also to this request no attention should be paid—and also for the sake of both. For the lender it is better, if fifty is paid, that the other document should remain in force, so that he will not be obliged to take an oath; and also for the borrower it is better, having paid one note, that he shall not be bound to watch the receipt for the other half. R. Ashi said: If the lender holds a promissory note for a hundred zuz, and orders the scribe to write for him another note for fifty zuz, claiming that the half was paid by the borrower, he must not be listened to; nor if he asks that the note should be written from that date, or from the current date. Why so? It is to be feared that the borrower has paid the whole amount, and to the demand that his note should be returned, he was answered, "It was lost," and furnished him with a receipt instead; and this note for fifty zuz he will collect from him, claiming that this note has nothing to do with the former one.

MISHNA *VII.*: If there were two brothers, one rich and one poor, and they inherited from their father a bath-house or an olive-press house, if for business, they must share equally; but if for private use, the rich one may say to the poor, "You may hire slaves, that they shall heat the bath for your use"; or, "You may buy olives and press them for your private use, but I shall not allow you to do this for a stranger, and you take the benefit." If it happen that in one city two persons bear one and the same name, they cannot give promissory notes to each other nor can any of the inhabitants collect on a promissory note of one of them. If there were found a promissory note of one of the two persons by some one which is marked "paid," the other may also claim: My note is paid. How, then, shall they do, if they wish that their documents shall be of value? Write their names threefold—*e.g.*, Joseph b. Simeon b. Jacob; and if they are alike in this also, they must make a sign to their names (*e.g.*, if one is shorter than the other, he must say, "the Little"; and if they are both of equal size, if one is a priest, he shall write "Cohen").

GEMARA: There was a promissory note which came to the court of R. Huna, in which was written: "I, A, the son of B, have borrowed from *you* a mana." Said R. Huna: "From you" can be any one—even the Exilarch, or even King Sabur. Hence it may be that some one lost it, and you found it. Said R. Hisda to Rabba: You must study the case, as in the evening R. Huna will ask you how to decide it. He had deliberated, and found the following Boraitha: A divorce which was signed by witnesses, but there was no date. Said Aba Saul: If the divorce reads: "I divorced her this day," it is valid. Hence we see that "this day" means that on which it was given out. The same is the case with this document; "from you" means from this man who holds it. Said Abayi to him: But perhaps Aba Saul holds with R. Elazar, who holds that the final act of the witnesses of transfer is considered (therefore he makes valid such a divorce as must be delivered in the presence of lawful witnesses). But in our case, why should it not be feared that the plaintiff found a lost note? And he answered: That such a supposition is not to be taken into consideration may be inferred from our Mishna, which states: If there are two persons who bear one and the same name, they cannot give promissory notes to each other, nor to any of the inhabitants, etc. But if one of them has a promissory note from one of the inhabitants, it is valid, and he may collect. Now, why is it not to be feared that it was lost by the other person who bears the same name, and this plaintiff found it? Hence we see that this is not taken into consideration. Abayi, however, may say that this is not taken into consideration because there is only one person who could lose it, and if so, he would certainly announce his loss; but in other cases, where it might be lost by any one, it should be feared. But is there not a Boraitha which states: As the two persons who bear the same name cannot collect promissory notes from each other, so also cannot one of them collect from any other one? Hence this Boraitha differs with our Mishna. And what is the point of their difference? Whether in such a case the plaintiff has to bring evidence. The Tana of the Mishna holds that he has not; and the Tana of the Boraitha maintains that he has. As it was taught: To promissory notes title is given by transferring. However, according to Abayi the holder

of them must bring evidence that they were transferred to him. And Rabha said: He must not.

Said Rabha: I infer my statement from the following Boraitha: If one of the brothers holds a promissory note from some one, claiming that his father or his brother had transferred it to him, it is for him to bring evidence. Hence we see that this law holds good only concerning brothers, who usually hinder one another, and claim that their brother took it without their or their father's consent; but in all other cases no evidence is needed. Abayi, however, maintains: On the contrary, this Boraitha comes to teach: Lest one say that concerning brothers, who hinder one another and are very careful with the inheritance, no evidence is needed for the one who holds the document, although in all other cases it is, the Boraitha came to state that it is not so. But there is another Boraitha: As the persons who bear the same name are allowed to take promissory notes from others, so they may take from each other. And what is the point of their difference? Whether a promissory note may be written for the borrower in the absence of the lender. The Tana of our Mishna holds that this may be done. Hence one of the two persons may go to the scribe, telling him that he wants to borrow from his fellow-citizen, who bears the same name, some money. And after he receives such a promissory note, he may claim that this was given by the other to him; therefore our Mishna says that they cannot collect from each other. And the Tana of the Boraitha holds: The promissory note must not be furnished to the borrower in the absence of the lender. Hence there is no fear.

"*If a promissory note was paid,*" etc. We see, because a receipt was found. But how would it be if not? The promissory note would hold good. But our Mishna states: Nor can any of the inhabitants collect. Said R. Jeremiah: It speaks of when in the note his name was written threefold; but if so, let them see the receipt, to whom it was made out. Said R. Hoseah: It speaks of when it was written threefold in the note, but not in the receipt. Abayi, however, said: The Mishna is to be explained thus: If there was found among the borrower's documents a writing, "The promissory note which I gave to Joseph b. Simeon is paid," if he possess such from the other, both are considered paid.

"*To write their names threefold,*" etc. There is a Boraitha: If both were priests, they must write their names fourfold—*e.g.*, Joseph b. Jacob b. Itz'hak b. Abraham; and that all the four names should be alike is very rare.

MISHNA *VIII.*: If one (while struggling with death) says to his son: "A promissory note among the notes I possess is paid, but I do not remember which," all of them are to be considered paid. If, however, one person has given two promissory notes, the larger amount is considered paid, and the smaller amount not.

GEMARA: Rabha said: If one says: "A promissory note from you, which I possess, is paid," and there were two from him, the larger amount is considered paid, and the smaller amount not; if, however, "The debt you owe me is paid," all the promissory notes from him which are in his hands are considered paid. Said Rabhina to him: According to your theory, if one says: "My field is sold to you," does it mean that the largest he has is sold? And if he said, "The field I possess is sold to you," does it mean all the fields? There it is different, as it is for the plaintiff to bring evidence; and if the buyer so claims, he has to bring evidence to what he claims. But here the creditor is the plaintiff; and if he says, "Your debt is paid," it is the best evidence that all the notes are paid.

MISHNA *IX.*: If one made a loan to his neighbor through a surety, he must not collect first from the surety, unless the borrower does not possess any estate; however, if the stipulation was made that he may collect from whom he pleases, then he may start with the surety.

R. Simeon b. Gamaliel (however) is of the opinion that even in such a case the lender may not start with the surety, unless the borrower does not possess anything. And he used to say thus: If one made himself a surety to a woman for her marriage contract, and thereafter the husband was about to divorce her, the court should compel him to vow that from the time divorced he should not derive any benefit from his former wife, which means not to remarry her, for fear that the husband and his wife may have made a bargain to collect the money for the marriage contract from the surety, and thereafter he will remarry her.

GEMARA: And why should not the creditor collect from the surety? Both Rabba and R. Joseph said: The surety may

claim: I have given bail for the money in case the borrower should die or run away, but not if I deliver him to you. R. Na'hman opposed, saying: Such is the Persian law. But this is not so, as the Persians collect from the surety only, even when the borrower possesses estates? R. Na'hman meant to say: Such a law is similar to a Persian law, for which they give no reason, and therefore he says the Mishna meant: He shall not summon the surety unless he has already summoned the borrower. So also we have learned in the following Boraitha: If one made a loan to his neighbor through a surety, he must not summon the surety first, unless the stipulation was that he might collect from whom he pleased. R. Huna said: Whence do we deduce that a surety is obliged to pay? From [Gen. xliii. 9]: "I will be a surety for him." R. Hisda opposed, saying: He was not a surety only, but also a receiver, as it reads farther on, "from my hand shalt thou require him," and also [ibid. xlii. 37], "deliver him into my hand," etc. Therefore said R. Itz'hak: From [Prov. xx. 16]: "Take away his garment, because he hath become surety for a stranger." (Here is repeated from Middle Gate, p. 305. See there.)

Amimar said: Whether a surety has to pay or not, R. Jehudah and R. Jose differ. According to the latter, who holds that an asmachtha gives title, he is responsible; and according to the former, who holds that an asmachtha does not give title, the surety is not obliged to pay. Said R. Ashi to him: But is it not a fact that a surety is responsible, although it is now taken as a rule that an asmachtha does not give title? Therefore said R. Ashi: Because of the pleasure that the lender trusted him on his word, the surety made up his mind that the lender should be paid under all circumstances; and such a case it is not considered as an asmachtha, but as a debt which lies upon himself.

"*That he may collect from whom he pleases*," etc. Rabba b. b. Hana in the name of R. Johanan said: Even then, if the borrower possess estates, he must not collect from the surety. But does not the latter part of the Mishna state that Simeon b. Gamaliel said so; from which it is to be inferred that the first Tana holds that he may collect from the surety in any event? The Mishna is not complete, and should read thus: If one made a loan to his neighbor through a surety, he must not collect

through the surety unless he had made the stipulation that he might collect from whom he pleased. But even then he collects from the surety in case the borrower does not possess any estate; but if he does, he must collect from the borrower first, and if it should not be sufficient, then from the surety. If, however, the surety was also the receiver of the loan for the borrower, then he may collect from the surety, although the borrower possesses estate. R. Simeon b. Gamaliel, however, maintains that even then he collects from the borrower if he possesses any estate. (In the name of R. Johanan was said (First Gate, p. 156): In that case the Halakha does not prevail with R. Simeon b. Gamaliel.)

R. Huna said: If the surety said: "Lend to this man, and I am the surety"; or, "I will pay"; or, "Count the debt to me"; or, "Lend him, and I will give to you"—all these versions are considered surety. If, however, he said to him: "Give to him, and consider me as receiving the money"; or, "Give to him, and I will pay"; or, "Count the debt to me"; or, "Give to him, and I will return to you"—all these versions are considered receipt. (*I.e.*, if he said: "Borrow from him," it means that he should be the debtor: "In case he shall not pay, I will." But if he says, "Give to him," then the borrower is not considered here at all, as the lender gave by his order.)

The schoolmen propounded a question: How is it if he said, "Lend him, and count me as the receiver"; or, "Give to him, and I will be surety"? According to R. Itz'hak: In the first case, in which he remarked, "I will be the receiver," he must be so considered, although he said, "Lend *him*"; and in the second case, in which he said, "I will be surety," he is to be so considered, although he said, "*Give* to him." R. Hisda, however, maintains: In either case he is considered a receiver, unless he said, "Lend him, and I will be the surety." And according to Rabha: All the versions mentioned above are considered surety, unless he said, "Give to him, and I will return to you."

Said Mar b. Amimar to R. Ashi: So said my father: If the expression was, "give to him, and I will return you," then has the lender nothing to do with the borrower. (Says the Gemara:) In reality it is not so. The lender may collect the

money from the borrower, unless the surety took the money from the hand of the lender and delivered it to the borrower.

There was a judge who transferred the estate of the borrower to the lender, before the lender had demanded his money from the borrower, and R. Hanin b. R. Yeba removed the judge. Said Rabha: Who so wise to do such a thing, if not R. Hanin b. R. Yeba, as he holds that the estates of the debtor are his surety; and our Mishna states: He must not collect from the surety, nor must he demand his debt first from the surety?

There was a surety for orphans who had paid the lender before he notified the orphans (*i.e.*, he was surety for the father of the orphans, who borrowed some money, and after his death he paid the lender from his own pocket, and then summoned the orphans to pay him from their estates). And R. Papa decided: To pay a debt for which there is no document is a meritorious act, to which orphans who are not of age cannot be compelled; and therefore the surety must wait with his claim until they shall become of age. R. Huna b. Jehoshua, however, maintains: The reason why the orphans have not to pay until they shall become of age is, because they are not aware that the deceased had not paid such a debt. And the difference of the two statements is, in case the deceased had confessed before his death that he had not yet repaid the debt. Then, according to R. Huna, the orphans may be compelled to pay; but not, according to R. Papa.

A message was sent from Palestine: If one was put under the ban because he declined to pay his debt, and he died while still under the ban, he is to be considered as if he had confessed before his death that he had not yet paid, and the orphans have to pay, as the Halakha prevails in accordance with R. Huna b. Jehoshua.

An objection was raised from the following: If the promissory note of the deceased was in the hands of the surety, who claims to have paid the lender, and he demands the debt from the orphans' estates, he cannot collect (for perhaps the lender lost it, and he found it). If, however, there was marked in the note by the lender that he has received the debt from the surety, he may. Hence this is correct only with R. Huna's statement; but it contradicts R. Papa, who said: The orphans must not

be compelled to pay in such a case. R. Papa may say: When the lender wrote that he received the money from the surety and transferred the promissory note to him, it is no longer considered a debt without a document, the payment of which is only a meritorious act, to which the orphans cannot be compelled; as for that purpose the lender marked, "I have received from you that from this date the promissory note should be considered as if given by the deceased to the surety."

There was a surety for a deceased debtor to a heathen, who paid the heathen before he had demanded his debt from the orphans. Said R. Mordecai to R. Ashi: So said Abimi of Hagrunia in the name of Rabha: Even according to him who holds that it may be doubted whether the deceased had paid his debt before dying, it is only when the creditor was a Jew, but not when he was a heathen, who usually demands the debt from the surety and not from the debtor. Answered R. Ashi: It is just the contrary. Even according to him who said that it must not be doubted whether the debt was paid, it is only concerning a Jew; but concerning a heathen, whose law dictates that they have to collect the debt from the surety, it is to be feared that if the surety should not have in his hand an amount which would cover the debt in case it should not be paid, he would not consent to be a surety; and therefore he cannot collect from the orphans except by suing them when they shall be of age.

"*If one made himself surety to a woman for a marriage contract,*" etc. Moses b. Azoi was a surety for the marriage contract of his daughter-in-law, whose husband was R. Huna, who was a scholar, and became thereafter very poor and was unable to support his family. Said Abayi: Is there not one who shall advise R. Huna to divorce his wife, and she shall go to his father, who is rich, and collect the marriage contract, and thereafter R. Huna shall remarry her? Said Rabha to him: But does not our Mishna state: "He shall vow not to derive any benefit," etc.? Rejoined Abayi: Must, then, every one who wishes to divorce his wife go to the court? Finally it was developed that R. Huna was a priest, who could not remarry his wife in case of being divorced. Said Abayi: This is what people say: Poverty follows in the path of the poor. But did he not say above (p. 304), that he who gives such advice

is called a shrewd knave? In this case, where the surety was his father and the son was a scholar, it is different. But was not the father a surety only, who has not to pay (as will be explained farther on)? He was also a receiver. But even then, it is correct according to him who holds that a receiver must pay, even in case the groom possessed nothing at the time of marriage. But what can be said to him who said that in such a case even a receiver is not to be compelled to pay? It may be said that when his father became surety the son was still in the possession of some estates; and if you wish, it may be said that with a father it is different. As it was taught: A surety in a marriage contract, all agree that he has not to pay. A receiver from a creditor, all agree he must pay; but concerning a receiver in a marriage contract and a surety from a creditor the rabbis differ. According to one: If the borrower possessed estates at the time the loan was made, the receiver must pay, as it may be supposed that he obliged himself with all his mind, as he had nothing to fear; and the other holds: He must pay in any event. The Halakha, however, prevails: A surety must pay in any event, unless he was a surety to a marriage contract, even in case the husband was in possession of estates at the time he became surety. And the reason is, because it may be supposed that he did so as a meritorious act, in order that the couple should not be parted; and he did no harm to the bride, as, if the husband had money, he would pay.

R. Huna said: A sick person who has consecrated all his estates, and at the same time said, " So and so has a mana with me," he may be trusted, as it is to be assumed that one would not use deceit against the sanctuary. R. Na'hman opposed: Is it, then, usual that one should use deceit against his children? And, nevertheless, both Rabh and Samuel say: If a sick person said, " So and so has a mana with me," if he added, " Give to him," he is to be listened to; but if he did not, he is not to be listened to. Hence we see that, if he did not say " Give," his statement that so and so has a mana with him is considered as if he did so for the purpose that, should he be cured, his children should not think him very rich. Why should not the same be applied in the case of the sanctuary? R. Huna speaks in case there was a promissory note, and only the sick person admitted that the note was a right one. If so, then we must

say that the statements of Rabh and Samuel applied even when there was no promissory note. But if so, it was a loan without a document, and both Rabh and Samuel said: On such a loan one cannot collect, neither from the heirs nor from the buyers? Therefore said R. Na'hman: In both cases it speaks of when there was a document: one case treats of when the note was approved, and the other when it was not. And then if he said "Give," he approves the note, and is to be listened to; and if he does not say "Give," the note remains unapproved.

Rabba said: A sick person who said, "A has a mana with me," and thereafter the orphans claimed that they have paid, they are to be trusted. If, however, he said, "Give a mana to A," and the orphans say they have paid, they are not to be trusted. But is not common sense against such a theory? It seems just the contrary. If the father said, "Give," and the orphans said "We did so," they may be trusted; but if the father said, "A had a mana with me," it may be supposed they did not hasten to pay him, and why should they be trusted? Therefore if such a statement was made by Rabba, it must be thus: If a sick person said, "A has a mana with me," and the orphans thereafter said that after deliberating the deceased said, "I have paid it already," they may be trusted, as it is probable the deceased remembered that he had returned it. But if the sick person says, "Give a mana," and thereafter the orphans claim the same as is said above, they are not to be trusted; as if it were for deliberation, he would not say "give."

Rabha questioned: If a sick person had confessed (*i.e.*, his creditor came to him, saying, "You owe me a mana," and he said, "yea"), must the sick person also add "yea," that those who are present shall be witnesses, as is required in such a case of one in good health, or not? And it is also a question whether he must say to the witnesses: "Mark this in writing"; and also whether a sick person has the right to say, "It was only a joke," or, "This is out of the question." Concerning one who is dying, after deliberating, he came to the conclusion that all these are not necessary, as there is a rule: The words of a dying person are to be considered as written and delivered to whom it concerns.

MISHNA *X.*: If one borrows money on a promissory note, the lender has a right to collect from encumbered estates; and

if without a note, but in presence of witnesses, the lender may collect from unencumbered only. If A holds a writing that B owes him money (not a promissory note, which usually must be drawn by witnesses), he collects from unencumbered estates only. A surety who has signed his name after the signatures of the document ("I, so and so, am a surety"), the lender may collect from the surety from unencumbered estates only (as it is considered a verbal surety, as there were no witnesses who testified to this).

Such a case happened to come before R. Ishmael, and he decided that he should collect from free estate. Ben Nanas, however, maintains: He must not collect from any estate. And to the question of R. Ishmael: Why so? he answered: If it happen that a creditor sees his debtor in the market, grapples him by the throat, and one passes by and says, "Leave him alone, I will pay," he is nevertheless free, because the loan was made not upon his surety. The same is the case here. If, after the document was made and the witnesses signed it, he adds, "I am a surety," he is not considered such, as he was a surety when the loan was already made. Said R. Ishmael: If one wishes to become wise, he shall occupy himself with the civil law; for there is no store (of wisdom) in the entire Law richer than it (the civil law). And those who wish to study civil law may take lessons of Ben Nanas.

GEMARA: Ula said: Biblically there is no difference between a loan on a document and by word of mouth; and it should be collected from encumbered estates. Why is it said that on a verbal one, one collects from free estate only? Because the buyers of the borrower should not suffer damage (*i.e.*, as they could not be aware of a thing done verbally). But when there is a document, it is their own fault if they do not investigate before they buy. Rabba, however, maintains the contrary: Both loans ought to be collected from free estates only; as, according to the biblical law, the estates are not mortgaged even if there is a document (unless it is so written). But why did the rabbis enact that a document collects from encumbered estate? In order not to close the door for borrowers. For a verbal loan, however, they did not enact, as it is not known to the people; and the buyers from the borrower could not know there was a loan.

Did, indeed, Rabba say so? Was not his decision [in Chapter VIII., p. 274] "that a first-born takes a double share in the estate collected after the death of the father"? Now if not mortgaged biblically, in a document why should he take a double share—to which he is not entitled in movable property or money collected after death? And lest one say that the names of Ula and Rabba should be reversed in the above statements, this would not hold good, as we have heard Ula saying elsewhere that a creditor collects biblically from the worse estate of the debtor. Hence we see that Ula holds that estates are mortgaged biblically. (This presents no difficulty, as the cited statement of Rabba [in Chapter VIII.] was only to give the reason of the Palestinians; but he himself does not hold with them.)

Both Rabh and Samuel hold: A verbal loan is not collectible —neither from heirs nor from buyers; as, biblically, estates are not mortgaged on any loan. But R. Johanan and Resh Lakish both hold: They are mortgaged, and therefore a loan is collectible—whether from heirs or from buyers. Said R. Papa: The Halakha prevails that a verbal loan is collectible from heirs, for the purpose of not closing the door to borrowers; but is not collectible from buyers, who could not know of the existence of such a debt.

"*If A holds a writing . . . from unencumbered estates,*" etc. Rabba b. Nathan questioned R. Johanan: How is it if this writing was approved by the court? And he answered: Even then, the same is the case. Rami b. Hama objected from a Mishna in Tract Gittin, in which it is stated that, according to R. Elazar, if such a document, without witnesses, was given to the lender in the presence of witnesses, he may collect from encumbered estates? The case is different, as the writing was with the intention of transferring it in the presence of witnesses; it is the same as if the witnesses had signed the document.

"*A surety . . . after the signatures,*" etc. Said Rabh: If the surety signed before the signatures, it may be collected from encumbered estates; and if after, from unencumbered estates only. But at some other time the same Rabh said: Even if he had signed his name before the signatures, it is to be collected from free estates only. Hence Rabh contradicts him-

self. This presents no difficulty, as his statement, from free estates only, speaks of when the surety wrote, *e.g.*, "B is a surety," which does not make it clear for whom he is a surety; and the witnesses who signed their names after him, perhaps they have nothing to do with the surety. And his statement that it is collectible from encumbered estates speaks of when there was written after the text, explaining the loan, "*And* so and so is the surety," to which the approval was by the witnesses signed after him. And the same was said by R. Johanan.

"*Such a case came before R. Ishmael,*" etc. Said Rabba b. b. Hana in the name of R. Johanan: Although R. Ishmael praised Ben Nanas, the Halakha prevails with R. Ishmael.

The schoolmen propounded a question: How is it if such a case as illustrated by Ben Nanas occurs? Come and hear what R. Jacob said in the name of R. Johanan: Even then, R. Ishmael differs with him. But with whom, then, does the Halakha prevail? Come and hear what Rabbin, when he came from Palestine, said in the name of Johanan: R. Ishmael differs with Ben Nanas even in the case illustrated by him, and the Halakha prevails also in this case with R. Ishmael. Said R. Jehudah in the name of Samuel: However, if the man who said, "Leave him alone, I will pay," fulfils his promise with the ceremony of a sudarium, he is mortgaged. Infer from this that in case of all other sureties no sudarium is necessary; and this differs with R. Na'hman, who said: Only a surety, in the presence of the court, is free from a sudarium; but all others are not. The Halakha, however, prevails that with a surety who was present when the money was delivered, a sudarium is not needed, but after the delivery it is needed. With a surety appointed by the court it is not needed, as, because of his pleasure at the court choosing him to be the surety, he makes up his mind to pay, and is mortgaged.

END OF TRACT BABA BATHRA AND OF VOL. VI. (XIV.)